HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1065 of 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.67,000/- granted as compensation with interest at 9% p.a. as against the claim of Rs.2,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988, by the order dated 24.01.2005 in M.V.O.P.No.1205 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- Principal District Judge at Khammam, the instant appeal is preferred by the petitioners seeking grant of balance amount.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

The facts, in brief, are that, on 08.09.1999, one Kamalamma, along with Aruna, was proceeding in an auto bearing No.AP 13 U 5751 from Kothagudem to 7th Incline and, when it reached near Dhanbad bus stop 5th Incline, a tipper bearing No.AP 20 U 1044 driven at high speed in a rash and negligent manner by the first respondent, at around 5.30 p.m., dashed the auto resulting its turning upside down driven by one Sri Boda Ramchander, as a consequence, the said Kamalamma and Aruna received injuries; and they were shifted to Singareni Collieries Hospital, Kothagudem but the said Kamalamma succumbed to injuries while undergoing treatment. The concerned police also registered a case against the first respondent, driver of the tipper. The petitioners projected that the deceased was a government employee in Municipal Corporation, Hyderabad; and they were completely dependent on her and lost their bread winner and sought Rs.2,50,000/- as compensation.

The first and second respondents are the driver and owner of the tipper respectively. The third respondent, being the insurer, opposed the claim, and denied the material allegations mentioned in the claim petition. While raising other pleas, however, contended that the amount of Rs.2,50,000/- claimed by the petitioners was excessive and exorbitant, sought to dismiss the claim.

Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the first petitioner examined himself as PW.1 besides examining his brother, Sri Katukuri Srinivas, as PW.2 and marked Exs.A.1 to A.4. On behalf of the third respondent, no witnesses were examined but, however, a copy of insurance policy of the tipper was marked as Ex.B.1 on consent.

The Tribunal, on appraisal of evidence, on issue No.1 held that due to rash and negligent driving of the driver of the tipper, the accident has occurred and, thus, favoured the petitioners. On issue No.2, treating the petitioners as dependants, discarded the stand of the petitioners that the deceased was earning Rs.5,000/- p.m. as a sweeper and, in the absence of any tangible evidence that the deceased was drawing salary of Rs.5,000/- p.m, taken the notional income at Rs.15,000/- per year, deducted $1/3^{rd}$ therefrom and arrived at Rs.10,000/- towards contribution of the family and, having taken the age of the deceased as 60 years, applied multiplier '5' and determined the loss of dependency at Rs.50,000/- besides granting Rs. 15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus, a total sum of Rs.67,000/- was granted as compensation with interest at 9% p.a.

It is the aforesaid order which is under challenge by the petitioners seeking enhancement contending in the grounds of appeal that the Tribunal wrongly taken the age of the deceased as 60 years despite the fact that she was 50 years old as per Exs.A.1 and A.3 and, though, PW.1 asserted that the deceased was drawing Rs.6,000/- p.m, working as a sweeper in the Municipal Corporation of Hyderabad, the salary certificate obtained on 05.11.2003 though handed over to the learned counsel appearing in the Court below but the same was not produced, as a consequence, they cannot be made responsible. It is contended that, instead of multiplier '5', the Tribunal ought to have taken multiplier '7.6' and ought to have granted interest at 12% as against 9% granted by the Tribunal and, hence, sought to grant the balance amount.

Heard Sri N.Ashok Kumar, learned counsel for the appellants, and Sri A.V.K.S.Prasad, learned counsel for the third respondent – United India Insurance Company Limited. Despite service of notice on the first respondent, none appears for him.

The instant appeal was dismissed against the second respondent for default by orders dated 03.01.2012. Since the second respondent remained ex parte before the Tribunal, dismissal of appeal against the second respondent is of no consequence, in view of the decision of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma.

Now the short point that arises for consideration is whether the petitioners are entitled for enhancement, as pleaded?

As seen from the appendix of evidence, the documents marked on behalf of the petitioners are Exs.A.1 to A.4, F.I.R., Charge sheet, Post-Mortem report, Motor Vehicle Inspector's report respectively. Thus, admittedly, no document is forthcoming from the petitioners' side to prove, first, that the deceased was working as a sweeper in the Municipal Corporation of Hyderabad; and second, the salary of Rs.5,000/- p.m. put-forth by the petitioners drawn by the deceased at the relevant time. Thus, Exs.A.1 to A.4 would not assist the petitioners in proving their stand that the deceased was working as a sweeper, and earning Rs.5,000/- p.m. towards salary. Ex.A.1 did not disclose the occupation of the deceased. However, in Ex.A.2, there is a recital as to the occupation of the deceased showing that she was working as a sweeper in the Municipal Office, 'resident of New Boyaguda near Sunnam Bhatti, Secunderabad'. Thus, to the extent of occupation of the deceased working as a sweeper in Municipal Office, Secunderabad, Ex.A.2 proves it, but, as regards the salary drawn by the deceased during the year of accident, that was in 2001, no evidence is forthcoming except the statement of the first petitioner as PW.1. In such an event, the Tribunal has taken the notional income. In fact, the petitioners ought to have filed documentary proof showing that the deceased was aged 50 years when they claimed that the deceased was 50 years old, that too working as a sweeper in the municipality, or by summoning the documents from the Municipal Office, Secunderabad which they did not do for the reasons best known to them.

During the course of arguments, it was pointed out that it was a fit matter to be remitted to the lower court and give a chance to both parties to lead further evidence with regard to the income of the deceased by summoning the documents from the Municipal Office, Secunderabad.

Since it may be difficult to secure documents or produce documents by the Municipal Office since 15 years elapsed from the year of taking place of accident, the learned counsel for the Insurance Company submits that the monthly income can be taken at Rs.3,000/-, and even 50% can be added towards future prospects in view of the decision of the Hon'ble Supreme Court in Rajesh v. Rajbir Singh for which the other side expresses no objection. Hence, taking Rs.3,000/- p.m. as the income of the deceased, which works out to Rs.36,000/- p.a. and, when 1/3rd is deducted, the contribution works out to Rs.24,000/- and, since the multiplier is '9' as per the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, the loss of dependency works out to Rs.2,16,000/-. This apart, 15% thereof towards future prospects, taking into consideration that she was aged between 50 and 60 years or 60 years, as per the finding recorded by the Tribunal, works out to Rs.32,400/-, and the loss of dependency at Rs.2,48,400/-. Thus, a sum of Rs.2,48,400/- is determined towards loss of dependency. Tribunal granted Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses and the same are confirmed. Thus, the petitioners are entitled to a total sum of Rs.2,65,400/-. However, the petitioners are entitled to interest at 7.5% p.a., only reducing the rate of interest from 9% p.a. granted by the Tribunal, as per the decision of the Supreme Court in Rajesh's case (2 supra).

It is no doubt true, the compensation determined exceeds the claim of Rs.2,50,000/- but there cannot be any embargo in granting excess amount when the petitioners are entitled to just and adequate compensation determined either by the Tribunal or the Court in view of the decisions of the Hon'ble Apex Court in Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and Rajesh's case (2 supra).

Thus, the Appeal is allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 24.03.2015

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