HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
M.A.C.M.A.No.911 of 2005

JUDGMENT:

The petitioners, having been dissatisfied with the award of Rs.2,81,000/- as compensation as against the claim of Rs.8.00 lakhs laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of Akula Srinivas (the deceased), who is the husband of the first petitioner; father of petitioner Nos.2 and 3; and son of the third respondent in O.P.No.116 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- I Additional District Judge, Karimnagar, preferred the instant appeal seeking enhancement of compensation.

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

Facts, in brief, are that the deceased, on 17.12.2003, had gone to Kundanpalli Village on a motor bike and having handed over lunch box to a tractor driver, who was a common friend of himself, working at IOC Bunk, was returning on the same bike and, when he reached the outskirts, a lorry bearing No. AHH 2837 driven in a rash and negligent manner, dashed him from behind, due to which he fell down and died instantaneously. The petitioners projecting that he was 32 years old on the date of accident, earning Rs.6,000/- p.m. on his profession of toddy tapping, sought Rs. 8.00 lakhs as compensation.

The first respondent (owner of the lorry) remained *ex parte*. Respondent Nos.2 and 3 filed separate counters. Respondent No.2 opposed the claim; and the third respondent opposed the claim by raising various pleas. The Tribunal framed three issues about the responsibility for the accident as under:

> "1.Whether the accident took place due to rash and negligent driving of the vehicle bearing No. AHH 2837 by its driver?
> 2. Whether the vehicle in question has got valid insurance on the date of accident?
> 3. Whether the petitioners are entitled for compensation, if so to what amount and from whom?
> 4. To what relief?"

During enquiry, the first petitioner, besides examining herself as PW.1, has examined Sri Ch.Odelu as PW.2, an eye-witness to the accident; Sri G.Srinivas, the President of Toddy Tappers Association in which the deceased was a member; and marked Exs.A.1 to A.8. On behalf of the second respondent, no witnesses were examined, and a copy of the insurance policy was marked as Ex.B.1.

The Tribunal, on appraisal of the evidence of PWs.1 and 2, supported by the contents of Exs.A.1 to A.5, which are attested copies of First Information Report, Charge Sheet, Post-Mortem report, Motor Vehicle Inspector Report and Inquest report respectively, held issue No.1 in favour of the petitioners.

On issue No.2, the Tribunal found that the copy of the insurance policy, marked as Ex.B.1, was in force on the date of accident; and, consequently, the second respondent was liable to pay compensation by way of indemnifying the first respondent.

On issue No.3, the Tribunal, having taken the age of the deceased as 33 years on the date of accident but, however, not agreeing with the stand of the petitioners that he was earning Rs.6,000/- p.m. on toddy tapping, and also excluding the evidence of PW.2, fixed the income of the deceased at Rs.2,000/- p.m. and, having deducted 1/3rd therefrom towards personal expenses, arrived at Rs.1,333/- p.m. towards his contribution to the family. Thus, the Tribunal arrived at Rs.15,996/- p.m. towards loss of dependency, applied multiplier as per the II schedule to Section 163-A of the Act, and worked out the loss of dependency at Rs.2,55,936/-. Besides the said amount, the Tribunal also granted Rs.10,000/- towards loss of consortium; Rs.5,000/- each towards love and affection to petitioner Nos.2 and 3 and respondent No.3. Thus, a sum of Rs.2,81,000/- was granted as compensation with interest at 9% p.a.

Heard Sri D.Bhaskar Reddy, Learned Counsel for the appellants.

The appeal against the first respondent (owner of the accident vehicle) was dismissed for default on 03.01.2012. However, dismissal of the appeal for default against the first respondent is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @

Reddemma[1], wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

So far as respondent Nos.2 and 3 are concerned, though, they were served with notices, none appears for the second respondent – Insurance Company, and the third respondent, who is incidentally the mother-in-law of the first petitioner. In fact, while apportioning the compensation awarded by the Tribunal, a sum of Rs.35,000/- was apportioned towards the share of the mother-in-law of the first petitioner.

The finding recorded by the Tribunal as to the petitioners' failure to substantiate that the deceased was earning Rs.6,000/- p.m. on the date of accident on his profession of toddy tapping since well-reasoned and based on appreciation of evidence on record does not warrant interference. No doubt, the petitioners examined PW.3 and marked Ex.A.8 but, despite the fact that PW.3 asserting that they used to pay tax to the Excise Department as the member of the society, no document was filed. That has been the reason why the Tribunal has fixed the income of the deceased at Rs.2,000/- p.m. Therefore, the finding recorded by the Tribunal fixing the income of the deceased at Rs.2,000/- p.m. since well-reasoned and well-appreciated does not warrant interference. However, the fact that the deceased was 33 years old was approved by the Tribunal. Therefore, keeping in view, the future prospects since he died at an young age and, in view of the decision of the Hon'ble Supreme Court in Rajesh v. Rajbir Singh[2], the petitioners are entitled to 50% of the income which the deceased was earning on the date of the accident. Thus, when kept in view, these factors, the income of the deceased can be arrived at Rs.2,800/- p.m. Keeping in view, the future prospects also, though he was working in an unorganized sector, and toddy tapper by profession, thus, it works out to Rs.33,600/- p.a.

Since the dependents are four in number, including the third respondent, when 1/4th of Rs.8,400/- is deducted towards personal expenses, the remainder works out to Rs.25,200/- p.a. towards contribution to the family. Since the deceased was 33 years old, the relevant multiplier as per the decision rendered by the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation[3], is '16'. When the multiplier '16' is applied, the loss of dependency works out to

Rs.4,03,200/-. Besides the same, petitioners are also entitled to an amount of Rs.50,000/- towards conventional sum as per the decision of the Supreme Court in Ramilaben Chinubhai v. National Insurance Company[4]. Thus, the petitioners are entitled to Rs.4,53,000/- with interest at 7.5% p.a. as per the decision in Rajesh's case

(2 supra) through out. The apportionment of the amount to the petitioners and the third respondent shall be as directed by the Tribunal.

The Appeal is, accordingly, allowed in part. No order as to costs.

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

A.SHANKAR NARAYANA,J

Date: 09.03.2015
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[1] 2001(1) ALT 495 (D.B.)

[2] 2013 ACJ 1403

[3] 2009 ACJ 1298

[4] 2014 ACJ 1430