HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.864 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,02,000/- granted as compensation by the order dated 01.10.2001 in O.P.No.552 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Medak at Sangareddy (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of M.Pentaiah in a road accident, petitioners preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 18.04.1998 at about 5-30 a.m., the said Pentaiah who is deceased herein, was bringing a pot of water and when he reached the National Highway No.7 to return to his house, since the driver of the lorry bearing registration No.AP 9U 4141 driven in a rash and negligent manner dashed him, due to which, he received injuries and died instantly. The petitioners, who are the wife and their children, stated that the deceased was aged 45 years, earning Rs.6,500/- per month as a contractor and mason and they lost their bread earner, and, therefore, sought the aforesaid amount as compensation from the respondent Nos.1 and 2, who are the owner and insurer respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal. Respondent No.2 filed counter opposing the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 3rd petitioner examined himself as P.W.1 besides examining one S.Bhoomaiah, an eyewitness, as P.W.2 and marked

Exs.A.1 to A.5 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined, but however, marked a copy of insurance policy as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred; and on issue No.2, observing that since the petitioners have not filed any documents to prove that the deceased was earning Rs.7,000/- per month by doing masonry, somehow, fixed the monthly earnings at Rs.900/- and deducting 1/3rd therefrom towards personal expenses and working out the annual contribution of the deceased to the family at Rs.7,200/-, taking the age of the deceased as 50 years, applied multiplier '10' and worked out the loss of dependency at Rs.72,000/-. Besides the same, the Tribunal also granted Rs.15,000/- towards non-pecuniary damages and Rs.15,000/- towards loss of consortium, and, thus, a total sum of Rs.1,02,000/- was granted by the Tribunal with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement of compensation contending in the grounds that without assigning any reasons, the Tribunal has fixed the income at Rs.900/- per month as against Rs.6,500/- per month towards earnings of the deceased as a mason, the Tribunal also did not appreciate the evidence of P.W.2, and, thereby deviated in arriving at the conclusion in determining compensation. It is also stated that despite the fact that the deceased was aged 45 years, the Tribunal, somehow, taken the age as 50 years without there being any evidence, and, hence, sought to grant balance amount.

9. Heard Sri K.Raji Reddy, learned counsel for the appellants-claimants, and Sri R.Venkat Rao, learned Standing Counsel for the 2nd respondent-Insurance Company. Despite service of notice on 1st respondent, none appears for him.

10. The finding recorded by the Tribunal fixing the monthly earnings at Rs.900/- is without any basis. Even as per the II Schedule to Section 163-A of the Act, the notional income for a non-earning member is prescribed at Rs.15,000/- per annum, in case there is no tangible evidence on record, if the petitioners failed to do so, thus, it accounts for a gross error on the part of the Tribunal in fixing the monthly income of the deceased at Rs.900/-. This apart, the Tribunal has taken the age of the

deceased as 50 years despite the fact that in Exs.A.2, A.4 and A.5, the age of the deceased was shown as 45 years. The Tribunal has not assigned any reason as to why the age of the deceased was taken as 50 years contra to the age mentioned in the said documents. Therefore, even the Tribunal deviated in appreciating the evidence on record in that regard. Therefore, the age of the deceased has to be taken as 45 years and the relevant multiplier has to be applied taking the notional income at Rs.15,000/- per annum and deducting 1/4th, which is permissible as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**, which accounts for Rs.3,750/-, out of Rs.15,000/-, the remainder works out to Rs.11,250/-. Relevant multiplier for the persons aged between 41 and 45 years is '14' as per the very same decision. When multiplier '14' is applied, the loss of dependency works to Rs.1,57,500/- (Rs.11,250/- x '14'). Since the petitioners have lost dependency and, though, the deceased was a mason and notional income is taken as mentioned above and since he was 45 years old, towards future prospects, 40% of the loss of dependency has to be added, which works out to Rs.63,000/-. Therefore, the petitioners are entitled to a total sum of Rs.2,20,500/- towards loss of dependency. The Tribunal granted Rs.15,000/- towards non-pecuniary damages and Rs.15,000/- towards loss of consortium to the 1st petitioner and the same are maintained.

11. Thus, the petitioners are entitled to a total sum of Rs.2,50,500/- (Rupees two lakh fifty thousand and five hundred) as against Rs.1,02,000/- granted by the Tribunal, towards compensation and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

27th March, 2015

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