**HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A.No.8 OF 2013**

**JUDGMENT**:

1 This appeal is filed challenging the judgment and award passed in O.P.No.387 of 2002 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Khammam, wherein and whereby an amount of Rs.6,17,936/- was awarded to the claimants as against the claim of Rs.20,00,000/-.

2 The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3 The facts leading to filing of the present petition are briefly as follows: On 03.2.2001 Vunnam Satyanarayana, who worked as Head Over Man in M.V.T.C in Singareni Collieries Company Limited, Kothagudem, was proceeding on Rajdoot motor cycle bearing No.APH 7939 towards Head Office from 5th Incline, Kothagudem. When he reached near 3rd Incline, the driver of the lorry bearing No.AHK 5855 had driven the same in a rash and negligent manner and hit the motor cycle of Satyanarayana causing instantaneous death of Satyanarayana (hereinafter referred to as the deceased). The Station House Officer, Kothagudem II-Town Police Station registered a case in Crime No.13 of 2001 under Section 304A IPC against the driver of the lorry. By the time of the accident, the deceased was aged about 45 years and earning Rs.16,000/- per month. The first petitioner is the wife

and the second petitioner is the unmarried daughter of the deceased. The petitioners are dependants on the income of the deceased. The first respondent is the driver of lorry bearing No.AHK 5855, which belongs to the second respondent, was insured with the third respondent with effect from 24.9.2001 to 23.9.2002 vide cover note No.893081. Therefore, all the respondents are jointly and severally liable to pay compensation to the petitioners.

4 The respondent Nos.1 and 2 remained *ex parte*. The third respondent filed counter denying the averments made in the petition including the manner of the accident. It is contended that the accident occurred due to the rash and negligent driving of the motor cycle by the deceased himself. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed against the third respondent.

5 Basing on the above pleadings, the Tribunal framed the following issued:

> 1. Whether Vunnam Satyanarayana died in a motor accident occurred on 15.12.2002 due to rash and negligent driving of vehicles i.e., lorry bearing No.AHK 5855 by its driver/R1 or due to fault of driving of Rajdoot Motor Cycle bearing No.APH 7939 by its driver/deceased or whether the accident occurred due to fault of both the drivers of the vehicles?
>
> 2. Whether the lorry No.AHK 5855 is owned by R-2 and was insured with R-3 on the date of accident? If so, what is the quantum of compensation payable to petitioners by the respondents jointly and severally?
>
> 3. To what relief?

6 During the course of trial, on behalf of the petitioners,

P.Ws.1 to 3 were examined and Exs.A1 to A5 and Ex.X1 were marked. On behalf of the third respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

7 On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AHK 5855, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.6,77,936/-. Not being satisfied with the compensation awarded by the Tribunal, the claimants preferred the present appeal.

8 The learned counsel for the appellants-claimants submitted that the Tribunal has not applied correct multiplier. He further submitted that the Tribunal failed to consider Ex.X1 pay-slip while assessing the income of the deceased. ***Per contra***, learned counsel for the third respondent-Insurance Company submitted that the Tribunal has rightly considered various aspects and awarded just and reasonable compensation. She further submitted that there are no grounds much less cogent and valid grounds to interfere with the judgment and award of the Tribunal.

9 Now the points that arise for consideration in this appeal are:

> 1. Whether the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AHK 5855 or not?

2. Whether the Tribunal has awarded just and reasonable compensation or not?

**Point No.1**:

10 Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1, A2 and A3 (certified copies of F.I.R., charge sheet and M.V.I. report respectively), the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AHK 5855, which resulted in the death of the deceased. The finding of the Tribunal, on issue No.1, became final in view of non-filing of the appeal by the insurance company. Accordingly, point No.1 is answered.

**POINT NO.2**

11 As per the recitals of the petition, the deceased was aged about 45 years. The oral testimony of P.W.3 coupled with Ex.B3 clearly reveals that the deceased was born on 13.06.1949. So, by the date of the death, the deceased was aged about 51 years 8 months. The Tribunal has taken the multiplier as '6'. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***[1]***,*** the appropriate multiplier, for the age group of 51 years, is '11'. Therefore, as rightly pointed out by the learned counsel for the petitioners, the Tribunal has not applied the correct multiplier.

12 The oral testimony of P.W.3 coupled with Ex.A5 reveals that by the time of accident, the deceased was drawing a gross salary of Rs.14,045/- p.m., which includes Rs.1,398/- towards quarterly bonus. As per the testimony of

P.W.3, they are deducting Rs.1,500/- from the salary of the deceased towards income tax. Taking into consideration all these aspects, the Tribunal arrived at a conclusion that the deceased may earn Rs.12,207/- p.m. Per annum it comes to Rs.12,207 X 12 = Rs.1,46,484/-. From out of the said amount 1/3$^{rd}$ has to be deducted towards personal expenses of the deceased. Therefore, net income of the deceased would come to (Rs.1,46,484 – 1/3$^{rd}$) = Rs.97,656/- p.a. Thus the loss of dependency would come to Rs.97,656/- X 11 = Rs.10,74,216/-.

13 The Tribunal awarded an amount of Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. However, in view of the ratio laid down by the Hon'ble apex Court, **Ramilaben Chinubhai Parmar Vs. National Insurance Co. Ltd.**[2], I am inclined to award an amount of Rs.50,000/- to the claimants under non-conventional heads. Hence the total compensation, for which the claimants are entitled to, comes to Rs.11,24,216/-.

14 In the result, the appeal is allowed in part, enhancing the compensation from Rs.6,17,936/- to Rs.11,24,216/-. The claimants are entitled to interest at 7.5% p.a. on the enhanced amount of compensation of Rs.5,06,280/- from the date of filing of the petition till the date of deposit. It is further made clear that the petitioner Nos.1 and 2 are equally entitled for the enhanced amount of compensation. Miscellaneous

petitions, if any, pending in this appeal shall stand closed.

**T.SUNIL CHOWDARY, J.**

Date: 30th July, 2015.

YS/***Kvsn****

[1] 2009 ACJ 1298 (SC)

[2] 2014 ACJ 1430