HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1169 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.1,10,000/- towards compensation as against the claim for Rs.3,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 read with

Rule 455 of the Motor Vehicle Rules, 1989, seeking enhancement of the same, claimants preferred this Civil Miscellaneous Appeal against the order and decree, dated 12-12-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional Chief Judge, City Civil Court, Hyderabad, in O.P. No.2129 of 2001.

2. The appellants herein are the claimants (petitioners) in the

O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Alwyn Nisan Van bearing No.AP-9U-2731, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 22-07-1995, one S. Anjaiah,

who is son of the 1st claimant and brother of the 2nd claimant,

was proceeding in Alwyn Nisan Van bearing No.AP-9U-2731 along with milk cans from Toopran towards Hyderabad, when it reached, Medchal service station on NH – 7, since driver of the van drove it in a rash and negligent manner, hit a stationed lorry bearing No.APR - 7177 from behind, due to which, the cleaner of the van and Anjaiah sustained injuries and immediately they were shifted to Gandhi Hospital, Secunderabad, where Anjaiah succumbed to the injuries on 23-07-1995 while undergoing treatment. The claimants claimed that the deceased Anjaiah was earning Rs.4,000/- per month and he used to contribute his entire income to his family, and, therefore, sought to grant a sum of Rs.3,00,000/-.

5 . The 1st respondent, owner of the van that involved in the accident, remained *ex parte* in the O.P. before the Tribunal.

6. The 2nd respondent, insurer of the van, contested the claim putting-forth various pleas requiring the claimants to prove the allegations levelled in the petition. However, claiming that the amount sought is highly excessive and exorbitant, prayed to dismiss the claim

petition.

7. The Tribunal framed three issues in the direction of fixing responsibility for the accident. During enquiry, the 1st claimant, mother of the deceased, examined herself as PW.1 and one Srisailam, an eyewitness to the accident, was examined as PW.2 and marked
Exs.A-1 to A-5. On behalf of the respondents, no oral or documentary evidence was adduced.

8. Having appreciated the evidence on record let in by the claimants, the Tribunal, on issue No.1, held that due to rash and negligent driving of the driver of the van, the accident had occurred. On issue No.2, while observing that no documentary evidence was placed on record to show that the deceased used to earn Rs.4,000/- per month on his business and was aged 22 years, taken Rs.15,000/-, notionally, as his annual income, and after deducting 1/3rd therefrom towards his personal expenses, considered the remainder of Rs.10,000/- as his contribution to his family and by applying multiplier '8', arrived at Rs.80,000/- towards loss of dependency, besides granting Rs.15,000/- towards loss of estate, Rs.10,000/- towards love and affection and Rs.5,000/- towards funeral expenses, and, thus, granted a total sum of Rs.1,10,000/- as compensation.

9. Aggrieved of the above order, the instant appeal

is preferred by the claimants contending in the grounds of appeal that the Tribunal ought to have taken multiplier ‘11’ as per Schedule - II of Motor Vehicles Act instead of ‘8’ and ought to have awarded interest at
9% per annum, and, therefore, sought to grant the balance amount.

10. Heard Sri C. Vikram Chandra, learned counsel for the claimants (appellants), and Sri G.S. Prabhakar Rao, learned counsel for the 2nd respondent, insurer.

11. Despite service of notice, none appeared on behalf of the
1st respondent, owner of the van.

12. Perused the order and the material on record. Though,
the 2nd respondent has raised the contention that the deceased was travelling in a goods vehicle, the Tribunal withheld that submission and found issue No.1 in favour of the claimants and admittedly no appeal is preferred by it challenging the above finding recorded by the Tribunal.

13. So what remains to be seen is, whether the amount of compensation granted by the Tribunal is just and adequate?

14. The amount of Rs.15,000/- fixed by the Tribunal

towards annual income of the deceased was based on notional income of a person, when actual income was not proved. However, as it is not disproved that the deceased was travelling with milk vans at the relevant time, on guess work, Rs.2,000/- can be taken as monthly income of the deceased and 50% thereof has to be deducted towards his personal expenses.

15. As per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]**,** his contribution to the family works out to Rs.12,000/- per annum by the Tribunal. The age of the deceased has to be taken for selection of multiplier, in view of the latest pronouncements of the Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**[2]**,** and for the said purpose, learned counsel for the claimants placed reliance on the decision of a Division Bench of this Court in **N. Surender Rao and others v. B. Swamy and another**[3], to the effect that:

> "17. In view of the judgments of the Hon'ble Apex Court in *P.S. Somanathan (1st supra),*
> *Amrit Bhanu Shali (3rd supra)* for application of multiplier, the age of the deceased bachelor shall alone be taken but not the age of the (dependants of the) deceased bachelor. But, in the judgment of the Hon'ble Apex Court

> succinctly held that when the age of the deceased is 15 years and above, the Tribunal shall select the multiplier as indicated in column No.4 of (the Table prepared in) *Smt. Sarla Verma (7th supra),* read with para 24 (sic.21) of that judgment."

16. The deceased was 22 years old. For the age group of the deceased, the relevant multiplier would be '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma's case** (Supra 1). Therefore, when the contribution of the deceased to his family is capitalised with multiplier '18' the loss of dependency works out to Rs.2,16,000/- (Rs.12,000/- x 18). The amounts of Rs.15,000/-, Rs.10,000/- and 5,000/- granted by the Tribunal towards loss of estate, love and affection and funeral expenses are maintained.

17. Thus, the claimants are entitled to a total compensation of Rs.2,46,000/- (Rupees two lakhs forty six thousand only) as against Rs.1,10,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum, on the entire compensation, from the date of petition till the date of realisation.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal,

by enhancing the compensation as stated supra. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 11, 2015.

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[1] **(2009) 6 SCC 121**

[2] **2012 AIR SCW 3901**

[3] **2014 (1) ALT 512 (D.B.)**