HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A. C.M.A. No.361 OF 2005</u>

<u>JUDGMENT</u>:

Dissatisfied with the award of Rs.2,32,640/- towards compensation, as against the claim of Rs.8,36,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, seeking enhancement of the same, petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 15-09-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Vijayawada, in O.P. No.318 of 2001.

2. The appellants herein are the petitioners in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the lorry bearing No.AP-16-U-2605 that involved in the accident, are respondent Nos.1 to 3, respectively

3. Appellant Nos.1 to 4 are wife, children and mother of M. Veeraiah, who died in the accident.

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

5. (a) The facts, in brief, are that on 17-09-2000, at about 20-45 hours, while one Veeraiah was proceeding on TVS Champ Moped bearing No.16-P-6954 in Autonagar towards Sanathnagar, lorry bearing No.AP-16-U-2605, proceeding in the same direction,

driven at high speed and in a rash and negligent manner, dashed the TVS Champ, due to which Veeraiah fell on the road and as the lorry ran over him, he died instantly.

(b) The petitioners being legal heirs of Veeraiah, who is hereinafter referred to as 'deceased', projecting that he was 44 years old at the relevant time, earning Rs.9,004/- per month on his STD PT public telephone booth, by selling edible oils, as agent of Sangam Dairy Milk bi-products, Milk products and on electrical works, and, sought for compensation against respondents Nos.1 to 3.

6. Respondent Nos.1 and 2, driver and owner, respectively, of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

7. Respondent No.3, insurer of the lorry, alone opposed the claim by raising various pleas.

8. The Tribunal framed four (4) issues in the direction of fixing responsibility for the accident. During enquiry, four witnesses were examined, amongst whom the petitioner No.2 was PW.1 and marked Exs.A-1 to A-24 besides marking Exs.X-1 to X-3. On behalf of the insurer, no witnesses were examined and no documents were filed.

9. The Tribunal, on hearing both sides and on appraisal of evidence on record, held issue No.1 in favour of the petitioners.
On issue No.2, while disbelieving the earnings from different sources of the deceased mentioned by the petitioners and spoken to by PW.1 and other witnesses, fixed income of the deceased at Rs.1,000/- per month towards commission on milk products of Sangam Dairy, Rs.500/- on electrification works and Rs.900/- towards commission

on P.T. STD booth, and, thus, arrived the monthly earnings of the deceased as Rs.2,400/-. Taking the age of the deceased as 44 years, by applying multiplier '10.45' and after deducting 1/3rd towards personal expenses of the deceased from Rs.2,400/- (Rs.2,400/- x 1/3) per month, arrived at Rs.1,600/- (Rs.2,400/- - Rs.800/-) per month or Rs.19,200/- (Rs.1,600/- x 12 months) per annum towards contribution of the deceased to his family, and arrived at Rs.2,00,640/- towards loss of dependency besides granting Rs.15,000/- towards loss of consortium to the 1st petitioner, Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses, and, thus, awarded a total sum of Rs.2,32,640/- towards compensation with interest at 9% per annum by giving further directions as to apportionment and withdrawal of the compensation.

10. It is the aforesaid order, which is under challenge in the instant appeal by the petitioners contending in the grounds of appeal that the Tribunal did not appreciate the evidence on record in proper perspective despite there being no rebuttal evidence as to earnings of the deceased at Rs.9,000/- per month by running PT STD booth, selling edible oils, as agent of milk products of Sangam Dairy and as electrician, and, therefore, sought to grant the balance amount.

11. Heard Sri T. Ravi Kumar, learned counsel for the petitioners (appellants), and Sri O. Manoher Reddy, learned counsel for respondent No.2, owner of the offending vehicle, and Sri R. Subba Rao, learned counsel for respondent No.3, insurer.

12. The appeal against respondent No.1, who is driver of the lorry that involved in the accident, was dismissed for default due to non-compliance of the order of this Court, dated 02-01-2012, however, it makes no difference since he remained *ex parte* before the Tribunal as well.

13. Perused the order under challenge and evidence, both, oral and documentary, on record.

14. So far as income of the deceased is concerned, the Tribunal has scanned the documentary evidence and oral evidence let in by the petitioners through PWs.1 to 4 and based on Ex.A-24, found that the deceased was earning Rs.1,000/- per month by way of commission on PT STD Booth for the months of August and April, 1999 and January, 2000 and since there is no other proof with regard to other amounts/income, fixed Rs.500/- as he was attending electrification works and Rs.900/- towards commission on milk products of Sangam Dairy. So far as electrification works are concerned as private electrician, the petitioners have exhibited Ex.X-1 showing that the deceased was having qualification to do electrical works and the evidence of PW.3 supports it, and, therefore, the same can be fixed at Rs.1,000/- from Rs.500/- per month, and, thus, the earnings of the deceased is fixed at Rs.2,900/- per month, which in turn works out to Rs.34,800/- (Rs.2,900 x 12 months) per annum. As per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, since dependants are four in number, instead of 1/3rd, 1/4th (Rs.34,800/- x 1/4 = Rs.8,700/-) has to be deducted towards personal expenses of the deceased and after deducting the same, it works out to Rs.26,100/- (Rs.34,800/- - Rs.8,700/-) per annum towards contribution of the deceased to his family. For the age group of the deceased, who was 44 years old at the relevant time, the appropriate multiplier as per the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) is '14', and when the same is applied, it works out to Rs.3,65,400/- (Rs.26,100/- x 14) towards loss of dependency, and besides the same, the petitioners are entitled to Rs.50,000/- towards conventional sum as per the decision of the Full Bench of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others,** rendered on 23-04-2014 in Civil Appeal

Nos.6091-6092 of 2011.

15. Thus, the petitioners are entitled to a total compensation of Rs.4,15,400/- (Rupees four lakhs fifteen thousand and four hundred) as against Rs.2,32,640/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, on the entire compensation, as against 9% granted by the Tribunal, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal,
by enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

March 13, 2015.

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