HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 1165 of 2005

JUDGMENT:

Dissatisfied with the compensation amount of Rs.2,68,000/- by the order dated 02.03.2005 in O.P. No.239 of 2004 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Karimnagar (for short 'the Tribunal') as against the claim of Rs.4,50,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988, the petitioners preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2 herein, who are the driver-cum-owner and insurer of the auto-rickshaw bearing registration No.AP15-V-2562 respectively, were respondents in the original petition before the Tribunal.

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

4. The facts, in brief, are that one Mohd. Jaffer, deceased herein, was proceeding on his TVS-XL moped to his native place Challuru village from Peddampeta village along with chicks basket on 27.12.2003 at about 8.00 P.M, and when he crossed Peddampeta cross road and reached near a bridge, an auto-rickshaw bearing registration No.AP15-V-2562 came from behind driven at high speed and in a rash and negligent manner and dashed the TVS-XL moped, due to which impact the moped fell down and Mohd. Jaffer sustained fatal injuries on his head, chest, liver, legs and died instantly. The Station House Officer, Jammikunta also registered a case in Cr. No.213 of 2003 under Section 304-A of the Indian Penal Code against the driver of auto and filed the charge sheet before the Court concerned. The petitioners being the heirs and legal representatives/dependants of the deceased projected that the deceased was 34 years old on the date of accident and was earning Rs.6,000/- per month, by running a chicken center in his village, by purchasing and selling the chicken birds and due to sudden demise of the deceased the petitioners were dragged to the road, and, therefore, sought Rs.4,50,000/- as compensation from the respondents 1 and 2, who are the driver-cum-owner of the auto-rickshaw and the insurance company respectively.

5. Respondent No.1 filed counter denying the allegations. However, respondent No.1 contended that since the vehicle was insured with respondent No.2, respondent No.2 alone is liable to pay compensation.

6. Respondent No.2 filed counter opposing the claim raising various pleas requiring the petitioners to prove the allegations claimed in the petition and finally sought to dismiss the claim.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, petitioner No.1, besides examining herself as P.W.1, examined one Md. Nayeemuddin as P.W.2, eyewitness to the occurrence, and got marked exhibits A.1 to A.5. On behalf of the respondents, none were examined, but the copy of insurance policy was marked as Ex.B.1

8. The Tribunal, on overall assessment of the evidence on record, more particularly, the evidence of P.W.2 and Exs.A.1 to A.5, having found that the accident had occurred only due to the rash and negligent driving of the auto driver, held issue No.1 in favour of the petitioners. On issue No.2, for want of legally acceptable evidence as to the earnings of the deceased at Rs.6,000/- per month as projected by the petitioners, the Tribunal fixed the income of the deceased at Rs.2,000/- per month and taken the age of the deceased as 35 years basing on the entries in Exs.A.2 and A.3, deducted 1/3rd there from towards personal expenses of the deceased, and the reminder Rs.16,000/- was taken as contribution for the family, applied multiplier '14.81', and arrived the loss of dependency at Rs.2,36,960/-. Besides the said amount, the Tribunal has also granted Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of love and affection and estate and Rs.1,040/- towards funeral expenses. Therefore, the Tribunal has granted total compensation of Rs.2,68,000/- with interest at 9% per annum from the date of petition till realization and also given direction in regard to the apportionment of compensation amongst the petitioners towards their respective shares and as to withdrawal of the amounts by them.

9. The aforesaid order, is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal, without considering the evidence on record, fixed the income of the deceased at Rs.2,000/- per month as against Rs.6,000/- being earned by the defendant and the Tribunal has also taken 35 years as the age of the deceased as against 34 years without proper appreciation of evidence and other amounts granted by the Tribunal were also very meager, and, therefore, sought to grant the balance amount.

10. Heard Sri Vemuganti Ramchandar Rao, learned counsel for the appellants, and Sri C.Prakash Reddy, learned counsel for respondent No.2. Despite service of notice on respondent No.1, none appears for him.

11. Perused the order and evidence on record let in by the parties.

12. The only question that arises for consideration, in the light of the contentions and the grounds raised in the appeal, is whether the appellants are entitled to enhancement of compensation?

13. So far as the earnings of Rs.2,000/- per month by the deceased is concerned, the finding recorded by the Tribunal, that there was no proof to show that the deceased was earning Rs.6,000/- per month by adducing evidence by the petitioners, cannot be faulted with. However, the deduction of 1/3rd towards personal expenses requires modification in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another.** Since the petitioners are numbering '6' as dependants on the deceased, 1/4th deduction is permissible towards personal expenses, in which case the contribution works out to Rs.18,000/- per annum. Concerning the multiplier, the Tribunal applied multiplier '14.81' taking the age of the deceased as 35 years, though, the petitioners contended that the deceased was 34 years old, but for the reasons best known to them, have not let in any evidence by filing voter identity card or civil supplies card. Even otherwise, the age of the deceased shown as 35 years in Exs.A.2 and A.3 taken by the Tribunal cannot also be faulted with. As per the table formulated in the very same decision, the relevant multiplier is '16'. Therefore, when multiplier '16' is applied to the mulitplicand i.e., Rs.18,000/-, the loss of dependency works out to Rs.2,88,000/-. It is also contended by the learned counsel for the appellants that since the death of the deceased occurred at the age of 35 years, as per the decisions of the Apex Court in **Sarla Verma's** case

(Supra 1) and also in **Rajesh and others Vs. Rajbir Singh and others,** towards future prospects 50% of the loss of dependency has to be computed and to be added, for which, the learned counsel for the insurance company has conceded in view of the decisional law. Therefore, 50% of Rs.2,88,000/- works out to Rs.1,44,000/-, and when the same is added to Rs.2,88,000/-, it works out to Rs.4,32,000/- towards loss of dependency. This apart, the petitioners are entitled to a sum of Rs.50,000/- as conventional sum as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar & others Vs. M/s. National Insurance Company & others.** Thus, the petitioners are entitled to a total compensation of Rs.4,82,000/- with interest at 7.5% per annum as against the interest at 9% per annum granted by the Tribunal, in view of the decision of the Hon'ble Supreme Court in **Rajesh's case** (Supra 2). As the amount determined herein exceeds the amount of Rs.4,50,000/-, which was actually claimed by the petitioners before the Tribunal, in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (Supra 2), the petitioners cannot be deprived of the just and reasonable compensation determined herein.

14. In the result, the appeal is allowed in part, and the award and decree dated 02.03.2005 passed by the Tribunal in
O.P. No.239 of 2004 is modified, enhancing the compensation from Rs.2,68,000/- to Rs.4,82,000/- (Rupees Four lakh and eighty two thousand only), with interest at the rate of 7.5% per annum from the date of petition till realization. The petitioners are directed to pay the Court fee within one (1) month from today. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: **26.03.2015**

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M.A.C.M.A. No. 1165 of 2005

Dt. 26.03.2015

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