

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.269 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.5,95,012/- as compensation as against the claim of Rs.12,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Motor Vehicle Rules, 1989, seeking enhancement of the same, appellants - petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 08-10-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Vizianagaram, in O.P. No.695 of 2002.

2. The appellants herein are the petitioners (claimants) in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the bus bearing No.AP-37-U-2814, are respondent Nos.1 to 3, respectively.

3. The appellants are wife, children and mother, respectively, of Datla Butchi Ramaraju, who died in the accident in the instant case.

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

5 . The facts, in brief, are that on 29-05-2002, while Butchi Ramaraju along with his friends was proceeding in the Jeep bearing No.AP-16-N-1574 from Ponnuru to Visakhapatnam, after attending a marriage at Ponnuru; near Ashram Hospital, Old petrol bunk after

crossing Eluru, at about 3-30 p.m., a bus bearing No.AP-37-U-2814, running between Eluru to Denduluru, coming in the opposite direction in wrong route, driven in a rash and negligent manner at high speed, hit the Jeep, due to which, the Jeep turned upside down and all the inmates of the Jeep fell down and sustained injuries, including Ramaraju, and immediately he was shifted to Government Hospital, Eluru, where he succumbed to the injuries while undergoing treatment.

6 . The petitioners, who are legal heirs of Ramaraju, who is hereinafter referred to as 'deceased', states that the deceased was working as Senior Assistant in Police Commissionerate Office, Vishakapatnam and getting a salary of Rs.7,235/- per month and they lost love and affection and other amenities, and, therefore, sought to grant a sum of Rs.12,00,000/- towards compensation.

7 . Respondent Nos.1 and 2, who are driver and owner, respectively, of the bus bearing No.AP-37-U-2814 that involved in the accident, remained *ex parte* before the Tribunal.

8. Based on the above pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident.

9. The Tribunal, on issue No.1, placing reliance on the evidence of PW.2 supported by Exs.A-1 to A-4, which are certified copies of F.I.R, post-mortem report, M.V.I. report and charge sheet, respectively, held issue No.1 in favour of the petitioners. On issue No.2, after an elaborate consideration of evidence, both, oral and documentary, on record, taking net salary of the deceased as Rs.5,307/- per month and Rs.63,684/- per annum, and after deducting 1/3rd therefrom towards his personal expenses, arriving at Rs.42,456/- per annum towards his contribution to the family, by

applying multiplier '12.79', awarded a sum of Rs.5,43,012/- towards loss of dependency besides awarding a sum of Rs.15,000/- towards loss of consortium to petitioner No.1, Rs.2,000/- towards funeral expenses and Rs.35,000/- towards repairs for the damage caused to the Jeep, in which the deceased was travelling at the time of accident, and, thus, granted a total sum of Rs.5,95,012/- towards compensation to the petitioners.

10. It is the aforesaid order, which is under challenge in the instant appeal by the petitioners aggrieved of the compensation granted by the Tribunal contending in the grounds of appeal that the Tribunal ought to have taken gross salary of the deceased and not net salary, and, therefore, sought to grant the balance amount.

11. Heard Sri Venkateswara Rao Gudapati, learned counsel for the petitioners, and Sri Narsi Reddy Teegala, learned counsel for respondent No.3, insurance company.

12. Though, served with notice, none appears for respondent No.1, driver of the bus that involved in the accident. Further, the instant appeal was dismissed for default against respondent No.2, owner of the bus that involved in the accident, by the order of this Court, dated 04-01-2012. However, absence of respondent Nos.1 and 2 is of any consequence as they were set *ex parte* before the Tribunal and also in view of the decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**.

13. Perused the order under challenge and the evidence, both, oral and documentary, let in by both the parties.

14. The short question that arises for consideration is whether

the petitioners are entitled to enhancement of compensation?

15. Learned counsel for the petitioners (appellants) submits that the Tribunal ought to have taken gross salary of the deceased and not net salary. He also contends that in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, 1/4th deduction is permissible towards personal expenses of the deceased, since the petitioners, who were dependants on the deceased, are four in number. It is also contended that the relevant multiplier would be '14', since the deceased was 41 years old at the relevant time. It is, still, further contended that 40% out of the amount arrived at towards loss of dependency has to be awarded in respect of future prospects as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, since, had the deceased survived, he would have reached the stage of Administrative Officer by way of promotions and also become eligible for further pay fixations, and, therefore, sought to accord the said benefits.

16. On the other hand, learned counsel for respondent No.3, insurer of the bus, supported the order passed by the Tribunal in determining the compensation as just and adequate, and, therefore, sought to dismiss the appeal.

17. Ex.A-6 pay certificate and the evidence of PW.3 are relevant for the purpose of adjudicating upon the controversy in the instant appeal.

18. Ex.A-6 pay certificate of the deceased reflects his basic pay as Rs.5,980/- and gross salary as Rs.7,235/- and after the deductions, net pay as Rs.5,307/- per month. The Tribunal, as per the decisional law, then in vogue, taken 'carry home' salary of the

deceased at Rs.5,307/- per month. However, in view of the decision of the Hon'ble Apex Court in **Reshma Kumari and others v. Madan Mohan and another** and referred to in the decision of the Hon'ble Apex Court in **Shashikala & Others v. Gangalakshamma & Others** gross salary has to be taken by giving appropriate deductions towards taxes. It appears that the deceased was not an income tax assessee. However, the amount of Rs.20/-, which was deducted towards professional tax, has to be deducted from the gross salary, and when the same is deducted, it comes to Rs.7,215/- (of Rs.7,235/- - Rs.20/-) and the same is construed as monthly earnings of the deceased, which works out to Rs.86,580/- (Rs.7,215/- x 12) per annum. Since the dependants are numbering four, $\frac{1}{4}$ th deduction is permissible towards personal expenses of the deceased which works out to Rs.21,645/- (Rs.86,580/- x $\frac{1}{4}$) and when the same is deducted from annual earnings of the deceased, it works out to Rs.64,935/- (Rs.86,580/- - Rs.21,645/-) towards contribution of the deceased to his family. Since the deceased was 41 years old at the relevant time, the relevant multiplier is '14', as per the decision of the Hon'ble Apex Court in **Sarla Verma's Case** (Supra 2). When annual contribution of the deceased is multiplied with multiplier '14', it works out to Rs.9,09,090/- (Rs.64,935 x 14), and 40% thereof towards future prospects, works out to Rs.3,63,636/-; and, thus, the loss of dependency works out to Rs.12,72,726/-. Besides the same, an amount of Rs.15,000/- is entitled by petitioner No.1, wife of the deceased, towards consortium; Rs.2,000/- towards funeral expenses and Rs.35,000/- towards repairs of the Jeep, as granted by the Tribunal. Though, the compensation arrived at is more than the amount claimed by the petitioners, they are entitled to the same since it represents just compensation and also in view of the decision of the Hon'ble Apex Court in **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**

19. Thus, the petitioners are entitled to a total compensation of Rs.13,24,726/- (Rupees thirteen lakhs twenty four thousand and

seven hundred and twenty six) as against Rs.5,95,012/- 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's Case** (Supra 3). The compensation shall be apportioned between the petitioners as ordered by the Tribunal.

20. Accordingly, the Civil Miscellaneous Appeal is allowed 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.

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

A. SHANKAR NARAYANA, J

March 23, 2015.

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