THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY THIS THE TWELFTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MR JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1970 of 2005

Between:
National Insurance Company Limited
Rep.by its Branch Manager,
Patancheru Branch, Medak District

..... APPELLANT

AND
S.Mariamma @ Mariya Rani and 6 others

.....RESPONDENTS

The Court made the following:

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1970 of 2005

JUDGMENT:

The instant appeal is preferred by the National Insurance Company Limited-3rd respondent in O.P.No.540 of 2002, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-the Principal District Judge, Medak at Sangareddy (hereinafter referred to as "the Tribunal"), whereby and whereunder, a sum of Rs.9,00,000/- was granted as compensation , which was also the claim amount, laid under

Section 166 of the Motor Vehicles Act, 1988, for the death of one S.Show Reddy, whose legal heirs and dependents are the petitioners in the said O.P.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. Facts, in brief, are that on 15.09.2002, the said S.Show Reddy was proceeding on his Scooter to Sangareddy, at about 8 p.m. when reached outskirts of Kandi village, on the National Highway No.9, an RTC bus, bearing registration No.AP23-V126, came in opposite direction, driven in a rash and negligent manner and dashed the Scooter, due to which, he suffered severe injuries and succumbed to them on 16.09.2002, while undergoing treatment. The Station House Officer concerned registered a crime against the driver of the RTC bus, and the petitioners, projecting that the deceased was aged 38 years old, earning Rs.8,000/- per month working as Supervisor in St.Anthony's Educational Society at Sangareddy and they were totally depending on him, sought the aforesaid amount from the respondents.

4. Respondent No.1-Corporation and the Respondent No.2-owner of the bus filed counters, setting out the same averments, however, opposing the claim, and respondent No.3-Insurance Company filed separate counter, opposing the claim.

5. The Tribunal, basing on the pleadings, framed as many as five issues about the responsibility for the accident.

6. During enquiry, the 1st petitioner, besides examining herself as PW 1, has examined G.Venkateshwarulu as PW 2, as witness to the occurrence, and E.Anthony as PW 3, from the Educational Society, to prove the employment and income of the deceased, on the date of his death, and marked Exs.A1 to A10 as regards their entitlement to the

compensation claimed. On behalf of respondents, one C.Laxman was examined as RW 1, as official of the 3rd respondent local branch office, however, no documents are filed.

7. The Tribunal, on appraisal of evidence, let in by the petitioners, on issue No.1, having found that there was rash and negligent driving of the driver of the APSRTC bus occasioning the accident, held in favour of the petitioners. On issue No.2, the Tribunal, on appraisal of evidence, held that the owner of the Scooter and its insurer are not proper and necessary parties, basing on the finding tendered on issue No.1. On Issue No.3, the Tribunal, on appraisal of evidence, held that the deceased was 38 years old, taken his income at Rs.8,000/- basing on the evidence of PW 3 and Exs.A6 to A10 and deducted 1/3rd therefrom towards his personal expenses and taken the remainder i.e. Rs.5,300/- as contribution to the family, worked out the same at Rs.63,600/- per annum, applied multiplier '14' and arrived at Rs.8,90,400/- towards loss of dependency. Besides the same, the Tribunal also granted Rs.15,000/- towards loss of consortium and another sum of Rs.15,000/- towards loss of estate, and thus, arrived at a total sum of Rs.9,20,400/-, but restricted the claim to Rs.9,00,000/- with interest @9% per annum.

8. Aggrieved by the said award, the National Insurance Company Limited-3rd respondent in O.P., preferred the instant appeal contending that the Tribunal ought not to have taken net salary into consideration, in assessing the compensation, that the Tribunal did not deduct the income tax liability as per the decision in ***A.Vijaya and Ors. v Vegurla Rajaiah and Ors.***[1] and that even the Tribunal did not properly appreciate the evidence on record, evidently, there was collusion between PW 3 and respondents Nos.1 to 5, and as Ex.A3 Panchanam shows that the occupation of the deceased was business whereas the petitioners have set up the stand that the deceased was working as

Supervisor in St.Anthony's Educational Society, thereby fraud was played on the Court below in order to claim higher compensation, and, therefore, sought to set aside the order and decree under challenge.

9. Heard Sri A.Veeraswamy, learned counsel for the appellant and Sri Palle Sriharinath, learned counsel for respondents 1 to 5 herein. Despite service of notice on Respondent Nos.6 and 7, none appears on their behalf.

10. Perused the order and the evidence on record, more particularly, the evidence of PW 3, Ex.A3 inquest panchanama and Exs.A7 to A10.

11. The learned counsel for the appellant contends that Ex.A3 depicts the occupation of the deceased as 'business', and therefore, Exs.A7 to A10 and the evidence of PW 1 cannot be relied upon on fabricated documents brought into existence for the purpose of claiming enhanced compensation, whereas, it is the stand of the learned counsel for the respondents 1 to 5 that the evidence of PW 3 and Exs.A7 to A10 clinchingly establish that the deceased worked as Supervisor in the said Society and there is absolutely nothing on record to rebut the evidence, both oral and documentary, let in by the petitioners.

12. Now the short question that arises for consideration is, whether the order under challenge is liable to be set aside?

13. It is no doubt true, Ex.A3-inquest panchanama shows the occupation of the deceased as 'business', but the fact that RW 1 despite stepping into the box making an admission that the Investigating Officers' report is not filed is sufficient enough to arrive at the conclusion that the evidence through PW 3 and Exs.A7 to A10 stands unrebutted. In fact, it is difficult to conclude from the annexures filed along with the income tax returns submitted by the deceased,

since the name of the deceased is forthcoming with the salary drawn by him showing it for income tax purposes by the assessee, that they are brought into existence. In such an event, there is no merit in the stand of the Insurance Company that the petitioners played fraud on court, by bringing Exs.A7 to A10 in collusion with PW 3.

14. Turning to the determination of compensation, it is no doubt true, nothing was deducted towards deductions as exhibited from Ex.A7, but even otherwise, while the principles laid down by the Hon'ble Apex Court in ***Sarla Verma v.Delhi Transport Corporation***[2]***,*** certainly 1/4th has to be deducted towards personal expenses and multiplier '15' in place of '14' is applicable, in which event, even Rs.1,000/- is deducted from Rs.8,000/- towards deductions and taking the salary as Rs.7,000/- per month approximately, still, the loss of dependency would be slightly more than Rs.9,00,000/-. Viewed from any angle, it cannot be said that the compensation, determined by the Tribunal, is highly excessive and arbitrary.

15. However, concerning interest, the Tribunal awarded interest @9% per annum. In view of the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***[3], interest is reduced from 9% per annum to 7.5% per annum on the compensation, granted by the Tribunal, from the date of petition till realization.

16. The Appeal is accordingly allowed in part, to the extent, indicated above. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

A. SHANKAR NARAYANA, J

Date: 12.03.2015
Dsr

[1] 2005(4) ALT 487

[2] (2009) 6 SCC 121

[3] 2013 ACJ 1413 (SC)