HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.279 of 2007

JUDGMENT:

Seeking enhancement of compensation as against Rs.1,86,100/- granted by the Tribunal by the order dated 09.10.2006 in M.V.O.P.No.52 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short 'the Tribunal'), the instant appeal is preferred by the petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellants herein are the petitioners, while the respondents herein, who are the owner and insurer of the lorry bearing No.AP-13-U-4039 respectively, were the respondents in the original petition.

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

4. The facts in brief are that on 25.09.2004, one Mahaboob Pasha/deceased boarded the lorry bearing No.AP-13-U-4039 with 20 bags of green chilies to transport the same to Hyderabad by paying Rs.1,000/- to its driver towards transportation charges and, thus, he was travelling as the owner of the goods. According to the petitioners, since the driver of the lorry drove it in a rash and negligent manner at high speed, lost control over the same and thereby turned upside down near Kothakota in Mahabubnagar Distirct at about 12.30 AM, on 25.09.2004, resulting in instant death of the deceased. The concerned police registered a case in crime No.109 of 2004 against the driver of the lorry. The petitioners claim that the deceased was 28 years old, owning Ac.04-00 of land and used to derive income of Rs.75,000/- to Rs.1,00,000/- per annum and, therefore, sought Rs.4,00,000/- towards loss of dependency against respondent Nos.1 and 2, who are the owner and insurer of the lorry respectively.

5. The 1st respondent-owner of the vehicle has not chosen to contest the claim and remained *ex parte* before the Tribunal. The 2nd respondent-Insurance Company opposed the claim raising various pleas. The main plea was that the petitioners were not entitled to any compensation against it, since it was not the deceased

alone who boarded the lorry with the chilies, in fact, one Boya Hanumanthappa along with one Telugu Venkateswarlu were also travelling along with their chilly bags as goods owners and also no premium was paid by the 1st respondent to cover the risk of the goods owners, as such, there was violation of terms and conditions of the policy. Therefore, sought to dismiss the claim against the insurance company.

6. Basing on the above pleadings, the Tribunal framed the following four issues about the responsibility for the accident.

1. "Whether the accident dated 24/25-09-2004 (intervening night) took place near Kothakota, Mahabubnagar District at about 12.30 AM was due to rash and negligent driving of the lorry bearing registration No.AP-13-U-4039?
2. Whether there was any violation of the policy terms and conditions?
3. Whether the respondents are liable to pay the compensation claimed. If not, what amount they are liable to pay to the petitioners, by virtue of the said accident?
4. To what relief?"

7. During enquiry, the 2nd petitioner herself was examined as P.W.1 besides examining one Telugu Venkateswarlu as PW.2 and one S.Akbar Vali as PW.3 and marked Exs.A.1 to A.6. On behalf of the 2nd respondent-Insurance Company, its senior assistant was examined as RW.1 and marked Ex.B.1-copy of policy.

8. The Tribunal while discussing elaborately as to whether the deceased can be construed as owner of the goods in terms of Section 147 of the Act and placing reliance on the decisions, held issue No.1 in favour of the petitioners. On issue Nos.2 and 3, the Tribunal gave a clear finding that the deceased can be construed as owner of the goods travelling in the lorry at the relevant time in view of the facts and circumstances mentioned above and by determining compensation taking into consideration Rs.40/- per day and deducted 1/3rd therefrom and applied '16' multiplier as per the decision of this Court in **Bhagawandas v. Mohd. Arif**, arrived at Rs.1,53,600/- towards loss of dependency. This apart, the Tribunal awarded Rs.15,000/- towards loss of consortium, Rs.7,500/- towards loss of expectation of

life, Rs.7,500/- towards pain and suffering and loss of amenities of life as per the decision of this Court in **United India Insurance Company Limited v. Mokkala Chandramma and Others** and another sum of Rs.2,500/- towards funeral expenses. Thus, a total sum of Rs.1,86,100/- was granted as compensation with interest @ 7.5% per annum thereon placing reliance on the judgment of the Apex Court in **Tamilnadu State Transport Corporation Limited v. S.Raja Priya and Others** and by examining the policy-Ex.B.1 recorded a definite finding that the insurance company is not liable to pay any compensation to the petitioners, but, however, again referred to Section 147 of the Act, as amended by the Motor Vehicles (Amendment) Act, 1994 and extracted the amended clause and directed the insurance company to deposit the amount initially and thereafter, recover the same form the

1st respondent-owner of the vehicle.

9. It is the said order which is under challenge, in the instant appeal preferred by the petitioners contending in the grounds of appeal that the Tribunal ought to have taken the earnings of the deceased at Rs.75,000/- to Rs.1,00,000/- per annum and also the Tribunal ought to have applied multiplier '18' as against '16' according to II Schedule to Section 163-A of the Act. It is also stated that since the deceased died at his prime youth, would have earned more had he been alive and contributed more to his family and, therefore, sought to grant balance amount.

10. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellants, and Smt. S.A.V. Ratnam, learned counsel for the

2nd respondent-insurance company. Though, notice was sent to respondent No.1, it was returned un-served. However, notice returning un-served is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***, wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle

> to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

11. During the course of arguments, the learned counsel for the 2nd respondent-insurance company submits that the insurance company appears to have not preferred any appeal, challenging the finding recorded by the Tribunal concerning the direction to pay compensation by the insurance company initially and to recover the same from the 1st respondent-owner of the vehicle. In such an event, that finding recorded by the Tribunal attains finality.

12. Now adverting to determination of compensation, the Tribunal has taken Rs.40/- as daily wage on the ground that no proof is forthcoming as to the income derived by the deceased though, it is contended by the petitioners that the deceased was owning Ac.4.00 of land with bore well and cultivating the same personally deriving income of Rs.75,000/- to Rs.1,00,000/- per annum. In support thereof, the petitioners filed pattadar passbooks issued by the Mandal Revenue Officer, Kodumur, but it was standing in the name of the 1st petitioner even according to the description mentioned therein by the revenue authorities. Be that as it may, the amount of Rs.40/- taken by the Tribunal as daily wage which discussion is finding place at page 10 of the order under challenge in sub-para 3 of para 8, even in the year 2004 as the date of accident occurred on intervening night of 24/25-09-2004 is on lower side and, therefore, enhanced to Rs.60/- per day which works out to Rs.1,800/- per month, Rs.21,600/- per annum, if 1/4th is deducted towards personal expenses of the deceased as per the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** as the petitioners as dependants are numbering '5', the reminder comes to Rs.16,200/-. Since the age of the deceased was shown as 28 years, the relevant multiplier as per **Sarla Verma's case** (5 Supra) is '17'. Thus, when the multiplier '17' is applied, it works out to Rs.2,75,400/- towards loss of dependency.

13. The learned counsel for the appellants relied on decision of the Division Bench of this Court in MACMA.No.2231 of 2013, Para 24 of the judgment. Basing on **Rajesh and others v. Rajbir Singh and others** this Court awarded a sum of Rs.1,00,000/- to the wife of the deceased towards loss of consortium. The said judgment was rendered by a Full Bench (three-judge bench) of the Hon'ble

Supreme Court on 12.04.2013. The learned counsel also relied on yet another decision of this Court in **Eddula Nagamani v. Smt. S. Sujala & another** (M.A.C.M.A.No.2231 of 2013, dated 18.11.2013) contending that, a Division Bench of this Court also placing reliance on the decision in **Rajesh's case** (Supra 6), granted an amount of Rs.1,00,000/- towards loss of estate. It is his submission that even towards funeral expenses, a sum of Rs.25,000/- may be granted basing on the decision in **Rajesh's case** (Supra 6). However, a Full Bench (three-judge bench) of the Hon'ble Supreme Court in its later decision in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**, rendered on 23.04.2014 in Civil Appeal No.6091-6092 of 2011, confirmed the conventional amount of Rs.50,000/- granted by the Tribunal while dealing with grant of future prospects. Therefore, the claimants are entitled to Rs.50,000/- towards conventional amount in view of the decision of the Hon'ble Apex Court in **Ramilaben's case** (Supra 7). Thus, the petitioners are entitled to a total sum of Rs.3,25,400/- towards loss of dependency with interest at 7.5% per annum from the date of petition till realization as per the decision in **Rajesh's case** (Supra 6).

14. In the result, the appeal is allowed in part and the award and decree dated 09.10.2006 passed by the Tribunal in M.V.O.P.No.52 of 2005 is modified, enhancing the compensation to Rs.3,25,400/- from Rs.1,86,100/- with interest at the rate of 7.5% per annum from the date of petition till realization. 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: 06.03.2015

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