HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1828 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.2,70,000/- granted as compensation *vide* order dated 07.03.2006 in M.O.P.No.369 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Rangareddy District at L.B.Nagar, Hyderabad (for short, 'the Tribunal') as against the claim for Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one S.Babu Rao, husband and father of the petitioners/appellants, the instant appeal is preferred.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were 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 15.05.2003 at about 12-40 hours, the said S.Babu Rao was riding his scooter bearing registration No.AP 28C 220 from Tarnaka towards Uppal, and on the way when he reached opposite Quality Wine Shop at Habsiguda, a tanker lorry bearing registration No.AP 9W 3330 driven by its driver at high speed and in a rash and negligent manner, hit the scooter of the said Babu Rao, due to which, he fell down and sustained injuries and succumbed to the injuries on 16.05.2003, while undergoing treatment in Gandhi Hospital. The Station House Officer, Osmania University Police Station also registered a case in Cr.No.225 of 2003 under Section 304-A of I.P.C. against the driver of the lorry. The petitioners claimed that the deceased was 30 years old as on the date of accident earning

Rs.5,500/- as a plumber and centering contractor and since the respondent Nos.1 and 2 are the owner and insurer of the accident vehicle, they sought Rs.5,00,000/- as compensation against them.

5. Before the Tribunal, the 1st respondent remained *ex parte* and the 2nd respondent opposed the claim by raising various pleas and sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner examined herself as P.W.1 besides examining one G.Venkataramana, an eyewitness, as P.W.2 and marked Exs.A.1 to A.5; whereas on behalf of the 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1, on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held on issue No.1 that due to rash and negligent driving of the driver of the lorry tanker, the accident was occurred, resulting in death of the said S.Babu Rao. On issue No.2, the Tribunal, placing reliance on authorities of various High Courts and the Hon'ble Supreme Court referred to in paragraphs-9(a) and 9(b) in the order under challenge and making observation that except the evidence of P.W.1, there is no other legally acceptable evidence to substantiate the stand of the petitioners that the deceased was earning Rs.5,500/- per month, further observing that since the notional income for a non-earning member is being taken as Rs.15,000/- and since the deceased was an able person and a skilled worker aged 30 years, fixed the income at Rs.21,000/- per annum, deducting 1/3rd therefrom towards his personal expenses, applied multiplier '17' for the reminder, i.e., Rs.14,000/-, and arrived at Rs.2,38,000/- towards loss of

dependency, besides granting conventional amounts, Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral and other expenses, and, thus, a total sum of Rs.2,70,000/- was granted with interest at 7.5% per annum on the said amount with further directions with regard to apportionment and withdrawal.

8. Aggrieved of the aforesaid order, the petitioners preferred the instant appeal contending in the grounds of appeal that the Tribunal somehow, did not properly appreciate the evidence on record and went wrong in fixing the earnings at Rs.21,000/- per annum for determining the loss of dependency and multiplier '18' ought to have applied instead of '17', and, therefore, sought to grant balance amount.

9. Heard Sri V.Atchuta Ram, learned counsel for the appellants. Despite listing the matter to this day for hearing, there is no representation on behalf of the 2nd respondent-Insurance Company. Though served with notice, none appears for the 1st respondent.

10. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties. The finding recorded by the Tribunal, that there is no proof to show the income of the deceased at Rs.5,500/- per month, except the evidence of self-serving statement of P.W.1, cannot be interfered with for the reason, no other witnesses were examined to prove the income of the deceased nor any documentary evidence is forthcoming. Concerning the annual income fixed by the Tribunal at Rs.21,000/-, the Tribunal has assigned reasons in fixing the same in its order. However, keeping in view, the fact that the deceased, being a plumber and centering labour contractor, as can be seen from Ex.A.3 copy of inquest report, the monthly earnings can be fixed at Rs.2,000/-, which works out to Rs.24,000/- per annum. Since the dependents are numbering '3', 1/3rd

is deducted towards his personal expenses and the reminder Rs.16,000/- is construed as contribution to the family, which accounts for loss of dependency. The deceased was aged 30 years, which is not in dispute. Therefore, the relevant multiplier for the age group of persons between 26 and 30 years is '17' as per the decision of the Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corporation and another***[1]. Thus, when the multiplier '17' is applied, it works out to Rs.2,72,000/- (Rs.16,000/- x '17') towards loss of dependency. The conventional amounts of Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium granted by the Tribunal are maintained. Concerning the funeral expenses, Rs.5,000/- is granted as against Rs.2,000/- granted by the Tribunal. Since the Tribunal has not granted any amount towards transport charges, a sum of Rs.5,000/- is granted towards transport charges. Thus, the petitioners are totally entitled to a sum of Rs.3,12,000/- as compensation as against Rs.2,70,000/- granted by the Tribunal. The interest at 7.5% per annum granted by the Tribunal is maintained in view of the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***[2].

11. In the result, the appeal is allowed in part and the judgment and decree dated 07.03.2006 passed by the Tribunal in M.O.P.No.369 of 2003 is modified, enhancing the compensation to Rs.3,12,000/- (Rupees three lakhs and twelve thousand only) from Rs.2,70,000/- (Rupees two lakhs and seventy thousand only), with interest at 7.5% per annum from the date of petition till realization and the said amount shall be apportioned among the petitioners as directed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

13th February, 2015

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[1] (2009) 6 Supreme Court Cases 121

[2] 2013 ACJ 1403