HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.2097 of 2007

JUDGMENT:

Dissatisfied with the amount of Rs.1,75,000/- granted as compensation by the order dated 07.06.2007 in M.O.P.No.879 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam (for short, 'the Tribunal') as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Joga Venkata Rao in a road accident, the instant appeal is preferred by his legal representatives seeking enhancement of compensation.

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 hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 11.04.2005 at about 10-00 a.m., the said Joga Venkata Rao (deceased) had brought load of sugarcane from Boyilakinthada to Govada Sugar Factory and alighted the lorry while keeping the lights on, he along with cleaner slept near the lorry. At about 1-00 a.m. early hours on the intervening night of 11/12.04.2005, a lorry bearing registration No.AAP 6912 driven in a rash and negligent manner at high speed, ran over the deceased causing his instant death, whose body was shifted to the hospital of sugar factory by the cleaner, where he was declared dead. The concerned Station House Officer also registered a case in Crime No.35 of 2005 against the driver of the lorry bearing registration No.AAP 6912. The petitioners, being the legal heirs and dependents on the deceased, projecting that he was earning a salary of Rs.4,000/- per month including batta, he used to contribute the entire amount to the family and the respondents, being the owner and insurer, are jointly and severally liable to pay compensation.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the 1st petitioner examined herself as P.W.1 besides examining one Gandiboyina Pydiraju, an eyewitness to the occurrence, as P.W.2 and marked Exs.A.1 to A.6 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioners; and on issue No.2, taking the notional income as Rs.15,000/- deducting 1/3rd therefrom towards personal expenses of the deceased, arrived at Rs.10,000/- towards contribution of the deceased to the family and taking the age of the deceased as 38 years, applied multiplier '15' and computed the loss of dependency at Rs.1,50,000/-, besides granting Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, and, thus, a total sum of Rs.1,75,000/- was awarded with interest at 6% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal by the petitioners seeking enhancement of compensation contending in the grounds that the Tribunal awarded a meager sum as compensation despite the fact that the documents reflecting that the deceased was a driver, and, in fact, licence held by the deceased was also filed, and, therefore, sought to grant balance amount.

9. Heard Sri Jayanti SC Sekhar, learned counsel for the appellants-claimants, and Sri Naresh Byrapaneni, learned Standing Counsel for the 2nd respondent-Insurance Company. Despite service of notice on the 1st respondent-owner of the vehicle, none appears for him.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners.

11. It is submitted by the learned counsel for the appellants-claimants that there is concrete evidence to show that the deceased was the driver and the Tribunal, somehow, taken notional income as Rs.15,000/- per annum, and, therefore, sought to consider Rs.4,000/- as monthly income of the deceased including batta. On the other hand, the learned counsel for the 2nd respondent-Insurance Company contends that it is a case where the Tribunal has taken the conservative approach

by taking notional income, and, in fact, he has drawn the attention to the notice of this Court that initially, the Tribunal has taken Rs.3,000/- and subsequent to the passing of order and decree amended the income as well as the compensation determined by it by taking the notional income at Rs.15,000/-, and, accordingly, amended the order as well as the decree.

12. It is true, the very certified copy of the order passed by the Tribunal filed by the learned counsel for the appellants would reflect that the Tribunal taken Rs.3,000/- per month as income and determined the compensation basing on the same by deducting 1/3rd therefrom, and, in fact, arrived at Rs.3,85,000/- totally, but somehow, amended it by taking the notional income at Rs.15,000/-, perhaps taking note of the fact that there was no proof of income of the deceased placed by the petitioners. Be that as it may, when the documentary evidence, Exs.A.1 to A.5, would reflect that the deceased was the driver of the lorry, in regard to which, there is no challenge from the other side, certainly, construing Rs.3,000/- as monthly income would be just and reasonable. In such an event, the income per annum would works out to Rs.36,000/-. Since the dependents are numbering five, who are the petitioners herein, 1/4th is permissible to be deducted towards personal expenses as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**. In which case, the contribution to the family works out to Rs.27,000/- per annum. Relevant multiplier is '15' even according to the multiplier fixed by the Hon'ble Apex Court in the very same decision. When the same is applied, the loss of dependency works out to Rs.4,05,000/- (Rs.27,000/- x '15'). The petitioners are also entitled to a total sum of Rs.50,000/- towards conventional sums as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Company Ltd.**.

13. Thus, the petitioner is entitled to a total sum of Rs.4,55,000/- (Rupees four lakhs and fifty five thousand) as against Rs.1,75,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. The Tribunal granted interest at 6% per annum and the same is enhanced to 7.5% per annum on the entire amount from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation as well as the rate of interest, as

indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

01st April, 2015

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