HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1107 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.2,43,000/- towards compensation as against the claim of Rs.5,00,000/-, laid under Sections 163-A and 166(1)(c) of the Motor Vehicles Act, 1988 (for short 'MV Act') read with Rule 455 of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 18-10-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nizamabad, in O.P. No.971 of 1999.

2. The appellants herein are the petitioners (claimants) in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.AP-28-A-6354, are respondent Nos.1 and 2, respectively.

3. Appellant No.1 is the wife and appellant Nos.2 to 8 are the children of Abdul Rasheed, 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. (a) The facts, in brief, are that on 29-08-1999 at about 5-00 p.m., when Abdul Rasheed was sitting on a four-wheel

vegetable push-cart, near Masjid of Chandrashekarnagar Colony on Dubba to Kanteshwar Road, a Jeep bearing No.AP-28-A-6354 driven in a rash and negligent manner at high speed, hit Abdul Rasheed, due to which, he fell down and the Jeep ran over him causing grievous injuries to him all over his person and he was immediately shifted to Bharat Pawar Hospital, Nizamabad and from there he was shifted to Government Head Quarters Hospital, Nizamabad, where he succumbed to injuries on 01-09-1999 at 10-30 a.m. while undergoing treatment. The Station House Officer, Nizamabad Rural Police Station, also registered a case in Crime No.149 of 1999 against the driver of the Jeep.

(b) The petitioners herein, who are legal heirs of Abdul Rasheed, who is hereinafter referred as 'deceased', projected that the deceased was earning Rs.3,000/- per month by selling vegetables on the very same push-cart, and, sought Rs.5,00,000/- as compensation against the respondents.

6. Respondent No.1, owner of the Jeep that involved in the accident, filed written statement. However, while denying the allegations in the claim petition, claimed that since the Jeep was insured with the 2nd respondent, it is liable to pay the compensation, if any.

7. Respondent No.2, insurer of the Jeep, filed written statement opposing the claim taking various pleas and requiring the petitioners to prove the material allegations mentioned therein.

8. The Tribunal framed three (3) issues, based on the pleadings put-forth by the parties, in the direction of fixing responsibility for the accident. During enquiry, petitioner No.1 besides examining herself as PW.1, also examined PW.2, an eye-witness to the occurrence,

and marked Exs.A-1 to A-4. On behalf of the respondents, no witness was examined, however, a copy of the insurance policy of the Jeep that involved in the accident was marked as Ex.B-1 on consent.

9. The Tribunal, on appreciation of evidence, both, oral and documentary, let in by the petitioners, held issue No.1 in favour of the petitioners. On issue No.2, taking the age of the deceased as 50 years, as recorded in post-mortem examination report - Ex.A-3, his monthly income at Rs.2,000/- or Rs.24,000/- per annum, and after deducting 1/3rd i.e., Rs.8,000/- (Rs.24,000/- x 1/3) therefrom towards his personal expenses, arrived at Rs.16,000/- (Rs.24,000/- - Rs.8,000/-) towards his contribution to the family, and by applying multiplier '13', assessed the loss of dependency at Rs.2,08,000/- besides Rs.15,000/- towards loss of consortium to the 1st petitioner and Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, the Tribunal awarded a total sum of Rs.2,43,000/- towards compenstion by apportioning the same among the petitioners with interest at 9% per annum.

10. It is the aforesaid order, which is under challenge by the petitioners in the instant appeal seeking enhancement of compensation contending in the grounds of appeal that the Tribunal ought to have taken the age of the deceased as 45 years, income at Rs.175/- per day and Rs.63,875/- per annum and ought to have granted interest at 12% per annum as against 9%, and, thus, sought to grant the balance amount.

11. Heard Sri Radhive Reddy, learned counsel for the petitioners (appellants), and Sri R. Venkata Ram, learned counsel for respondent No.2 - Insurance Company.

12. Respondent No.1 is not served with notice and a memo is also filed to that effect. However, since the notice was sent to the

address as mentioned in the O.P. before the Tribunal and since he filed written statement and actively participated in the O.P. proceedings before the Tribunal, his absence does not make any consequence since it is an appeal by the petitioners seeking enhancement of compensation.

13. As seen from the order under challenge, the amount of Rs.24,000/- arrived at by the Tribunal as annual income of the deceased does not warrant any interference as there is no evidence to show that he was earning Rs.175/- per day as contended by the petitioners. However, deduction of 1/3rd towards personal expenses of the deceased is incorrect, since in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation,** when the dependants are five (5) or more, 1/5th deduction is permissible, and, since in the present case, the petitioners, who are dependants on the deceased, being eight (8) members, 1/5th i.e., Rs.4,800/- (Rs.24,000/- x 1/5) deduction is permissible. Thus, contribution of the deceased to his family works out to Rs.19,200/- (Rs.24,000/- - Rs.4,800/-) per annum. The multiplier applied by the Tribunal is correct since even according to the decision of the Hon'ble Apex Court, referred supra, for the age group of the deceased, who was 50 years as per Ex.A-3 post-mortem report, the appropriate multiplier is '13' only. Thus, when the annual income of the deceased is capitalised with multiplier '13', it works out to Rs.2,49,600/- (Rs.19,200/- x 13) towards loss of dependency. Besides the same, the petitioners are also entitled to a sum of Rs.50,000/- towards conventional sum as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others,** rendered on 23-04-2014 in Civil Appeal Nos.6091-6092 of 2011. Further, the petitioners are also entitled to a sum of Rs.10,000/- towards transportation and medical expenses as the deceased survived for two days after the accident.

14. Thus, the petitioners are entitled to a total compensation of Rs.3,09,600/- (Rupees three lakhs nine thousand and six hundred) as against Rs.2,43,000/- 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 and others v. Rajbir Singh and others.**

15. Accordingly, the Civil Miscellaneous Appeal is allowed in part 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.

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

A. SHANKAR NARAYANA, J

March 19, 2015.

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