HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1362 of 2005

JUDGMENT:

The United India Insurance Company Limited, who is respondent No.3 in M.V.O.P.No.212 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short, 'the Tribunal'), preferred the instant appeal aggrieved by the order dated 05.04.2005, whereby and whereunder, the Tribunal has granted Rs.9,77,000/- as compensation with interest at 9% per annum for the death of Cheripalli Gandhi Babu, who is husband of petitioner No.1 and father of petitioner Nos.2 and 3 and son of petitioner Nos.4 and 5, on the main ground that the amount of compensation awarded by the Tribunal is on higher side.

2. Appellant herein is respondent No.3, while respondent Nos.1 to 5 herein are the petitioners and respondent Nos.6 and 7 herein, who are the driver and owner of the lorry bearing registration No.AIV 4828, respectively, were the respondents in the original petition.

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

4. The facts in brief are that on 25.09.1998, Cheripalli Gandhi Babu (deceased) started from his house at about 3-00 p.m. on his personal work at Kothagudem, while he was proceeding on foot on the left side of the road at about 4-30 p.m., when he reached near S.C.Company Head Office on Kothagudem-Ramavaram main road, a lorry bearing registration No.AIV 4828, driven by respondent No.1 in a rash and negligent manner at high speed, coming from Kothagudem towards Ramavaram, dashed the deceased, due to which, he fell down, received injuries and died instantly. On the complaint, the

Station House Officer, Kothagudem I Town Police Station registered a case in Crime No.126 of 1998 for the offence punishable under Section 304-A I.P.C. against respondent No.1 and other usual formalities were observed. The petitioners claiming that the deceased was working as Coal Filler in S.C.Company, 7th Shaft, Kothagudem, drawing monthly salary of Rs.7,333/- and was aged 35 years on the date of accident, sought Rs.10,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that they lost their only earning member and they were all dependents on him.

5. Respondent Nos.1 and 2, who are driver and owner of the accident vehicle, remained *ex parte*. Respondent No.3-Insurance Company opposed the claim by filing counter raising various pleas. It is also contended in the counter that the claim petitioners herein filed O.P.No.917 of 2000 under Section 14 of the Act and the same was pending on the date of filing of the instant claim petition and the petitioners deliberately suppressed the same and that the compensation claimed is highly excessive and exaggerated, and, therefore, sought to dismiss the claim petition.

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 R.Jayaram and Kamepally Komaraiah as P.Ws.2 and 3 and marked Exs.A.1 to A.9; whereas, on behalf of respondent No.3, no witnesses were examined, but copies of insurance policy and salary particulars of the deceased were marked as Exs.B.1 and B.1.

7. On appraisal of evidence, both, oral and documentary, let in by the parties, the Tribunal by placing reliance on the judgments of this Court in ***Sanasapuri Samba Murthy v. K.Rama Rao***[1] and

A.P.S.R.T.C., Hyderabad v. Smt. T.Yasodha and others [2], held issue No.1 in favour of the petitioners.

8. On issue No.2, basing on the evidence of P.W.1 and pay slip marked as Ex.A.7, which reflects that the deceased was drawing salary of Rs.7,851/-, and also Ex.A.8, which shows monthly salary of the deceased at Rs.7,835/- in which bonus of Rs.564-80 ps was also included, the Tribunal deducting the said amount, arrived at Rs.7,300/- per month as the salary. The Tribunal then placed reliance on the decision of the Hon'ble Supreme Court in ***Sarla Dixit and another v. Balwant Yadav and others*** [3] to fortify its finding recorded in fixing Rs.7,300/- per month towards contribution to the family without deductions. The Tribunal then taking the age of the deceased as 35 years on the date of accident, applied multiplier '16', and having deducted 1/3rd from the salary of the deceased towards his personal expenses, arrived the contribution to the family at Rs.5,000/- per month, which worked out to Rs.60,000/- per annum, and arrived the loss of dependency caused to the petitioners at Rs.9,60,000/-. The Tribunal has also granted Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, and, thus, awarded a total sum of Rs.9,77,000/- towards compensation with interest at 9% per annum and given suitable directions in regard to apportionment and withdrawal of the amount.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal ought to have taken the net salary of the deceased but not the gross salary while applying the multiplier and computing the compensation. It is also contended that the Tribunal ought to have granted consortium at Rs.5,000/- but not Rs.15,000/- as per the Second Schedule of the Act and placed reliance on the judgment of the Hon'ble Supreme Court in ***Asha and others v. United India Insurance Company Ltd.,***

***and another*[4]**.

10. Heard Smt. A.Malathi, learned Standing Counsel for the appellant-Insurance Company. No representation for respondent Nos.1 to 5. It is mentioned in the cause title of the grounds of appeal, respondent No.6, who is driver of the accident vehicle, is not a necessary party. Respondent No.7, who is the owner of the accident vehicle, is not served. Since respondent No.7 suffered decree, his absence makes no difference in deciding the controversy herein.

11. Perused the order under challenge and the evidence on record. Learned counsel for the appellant-2nd respondent-Insurance Company has fairly submitted that the decision of the Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corporation and another*[5]** holds the field. He has also fairly submitted that the gross salary of the deceased has to be taken into consideration while applying the multiplier and computing the compensation. Of course, it is contended that the multiplier '16' applied by the Tribunal is not correct, but the 2nd respondent-Insurance Company is not disputing that the deceased was aged 35 years on the date of accident. In which case, as per the table formulated by the Hon'ble Supreme Court in ***Sarla Verma's*** case (supra 5), relevant multiplier is '16' for the persons aged between 31 and 35 years. Therefore, there is no force in that submission. Even turning to the finding recorded by the Tribunal as to monthly earnings of the deceased, it (the Tribunal) has relied on Ex.A.7-pay slip and Ex.A.8-salary certificate and deducted Rs.564-80 ps, which was shown as bonus. It is not forthcoming from the side of the contesting respondent, who is appellant herein, as to whether the deceased was an income tax assessee during the relevant time. As seen from the order, the Tribunal has taken into consideration even the future prospects and

that has been the reason to arrive at Rs.7,500/- as monthly earnings. Therefore, the finding recorded by the Tribunal does not suffer from any legal infirmity, as gross salary has to be taken into consideration in determining compensation with permissible deductions including income tax. Learned counsel for the 2nd respondent-Insurance Company, who is appellant herein, requests that the interest granted by the Tribunal at 9% per annum be reduced. As seen from the grounds of appeal, the rate of interest awarded by the Tribunal was not challenged at all. In such an event, it is not fair to reduce the rate of interest. Thus, there is no merit in the instant appeal.

12. Accordingly, the instant appeal is dismissed confirming the order dated 05.04.2005 in M.V.O.P.No.212 of 2001 passed by the Tribunal. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

19th August, 2015

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[1] 1997(1) A.P.L.J. 394
[2] 1996(4) A.L.T. 1133
[3] (2004) ACC 396 (SC)
[4] 2004 ACJ 448
[5] (2009) 6 SCC 121