HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 2767 of 2005

Judgment:

The third respondent – National Insurance Company Limited in MVOP No.811 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–III Additional District Judge (Fast Track Court), Bhimavaram, preferred the instant appeal aggrieved by the order, dated 28.02.2005, in the said claim petition on the ground that the award of Rs.1,99,900/-, as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Motor Vehicles Rules, is excessive.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 06.10.2003, the son of the petitioners namely, Pamula Raju and his friend Karumanchi Bheesmarao, having witnessed "Dhil" movie at Srungavruksham village, were returning to their village Pennada on foot. When they reached the burial ground of Muslims, a lorry bearing registration No.AP-9V-234, coming from Srungavruksham village and proceeding towards Bhimavaram, driven by its driver in a rash and negligent manner, dashed him and his friend, due to which, he fell down and sustained head injury and, while undergoing treatment in the hospital, he succumbed to injuries on 07.10.2003. The petitioners being the parents of the deceased, claiming that the deceased was working as Coolie, earning Rs.3,000/- per month and contributing his entire earnings for the sustenance of the family and aged about 20 years on the date of accident, sought Rs.2,00,000/- as compensation against the respondents 1 to 3, who are driver, owner and insurer of the vehicle respectively.

4. Before the Tribunal, the first and second respondents remained *ex parte*. The third respondent –Insurance Company opposed the claim by raising various pleas.

5. The Tribunal, based on the said pleadings, framed four issues in order to fix the responsibility for the accident.

6. During enquiry, the first petitioner examined himself as PW.1 and the eye witness Karumanchi Bhishmarao as PW.2 and marked Exs.A1 to A3, which are attested copies of FIR, post-mortem examination certificate of the deceased and Motor Vehicle Inspector's report. On behalf of the respondents, one K. Samuel Raju was examined as RW.1 and copy of insurance policy was marked as Ex.B1.

7. The Tribunal, on appraisal of evidence let in by the petitioners, held issue No.1 in favour of the petitioners. On issue No.2, fixing the daily earnings of the deceased at Rs.40/- per day or Rs.1200/- per month, deducted 1/3rd towards his personal expenses, applied multiplier '19' and arrived at Rs.1,82,400/- towards loss of contribution to the family. The Tribunal has also granted a sum of Rs.15,000/- towards mental agony to the petitioners and Rs.2,500/- towards funeral expenses and, thus, a total sum of Rs.1,99,900/- was granted with interest at 9% p.a., from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have taken the age of the mother of the deceased for the purpose of arriving at the multiplier, but not the age of the deceased and since the mother of the deceased was aged 38 years being younger parent and the death of the deceased had taken place in unmarried status, the Tribunal ought to have applied the multiplier "13.61" and, thereby, claims that the Tribunal granted fairly excessive compensation and, therefore, sought to set aside the award.

9. No representation for the appellant – Insurance Company. None appears for the respondents 1, 2 and 4. The third respondent, who was the first respondent in the OP, of course not served, but, since he suffered the decree and he being the driver of the vehicle, it makes no difference.

10. As seen from the grounds of appeal, the appellant is attacking the multiplier adopted by the Tribunal basing on the age of the deceased and not on the basis of the age of the younger parent. It is now well settled that in case of death of an earning member, though, the death taken place in unmarried status, the multiplier for the age group of the persons of the deceased is as provided in the table formulated by the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]. Besides the same, even in **Amrit Bhanu Shali v. National Insurance Company Limited**[2], the Hon'ble Apex Court approved the principle that the age of the deceased, though, dies in unmarried status, has to be taken for determining the compensation and not the age of the younger parent of the deceased.

11. As seen from the order passed by the Tribunal, in determining the compensation, the Tribunal has deducted 1/3rd towards personal expenses, but ought to have deducted 50% in its place as the deceased died in unmarried status. But, the amount awarded by the Tribunal cannot be construed as excessive, as even in the case of the death of a non-earning member, aged below 15 years and above 5 years, granting compensation of Rs.1,50,000/- is permissible as per the decision of the Hon'ble Apex Court in **Puttamma v. K.L. Narayana Reddy**[3]. The appellant has, however, not challenged the rate of interest at 9% p.a., granted by the Tribunal. Therefore, the award passed by the Tribunal is confirmed dismissing the instant appeal. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 28.12.2015
Nsr

[1] (2009) 6 SCC 121
[2] 2012 AIR SCW 3901
[3] 2014 ACJ 526