HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1545 of 2005

Judgment:

Aggrieved by the award of Rs.10,000/- as compensation, by the order, dated 04.04.2005, in OP No. 56 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–I Additional District Judge, Medak, at Sangareddy, as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of the deceased, the instant appeal is preferred by the wife and sons of the deceased seeking balance amount.

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 23.09.2000, the deceased namely, S. Nagappa boarded an Auto bearing registration No.AP 13V 609 along with his Bhajas (Drums) to get them repaired and, when the Auto reached within the limits of Nagwar village, since the driver of the Auto drove it in a rash and negligent manner at high speed and lost control over it, it turned upside down, due to which he fell down and received injuries. He was shifted to Government Hospital, Zaheerabad, and from there he was shifted to Gandhi Hospital and he was throughout unconscious and succumbed to injuries on 25.09.2000 i.e., two days subsequent to date of accident while undergoing treatment. The petitioners, claiming that the deceased was 48 years old on the date of accident and earning Rs.4,500/- per month as drum beater sought a total sum of Rs.2,50,000/- as compensation.

4. Before the Tribunal, the first respondent – owner of the Auto

remained *ex parte*. The second respondent – Insurance Company opposed the claim by raising various pleas.

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

6. During enquiry, the first petitioner besides examining herself as PW.1 also examined one Swamy Dass as PW.2 and marked Exs.A1 to A4, which are certified copies of FIR, Charge Sheet, Post-mortem Examination Report and Decree in OP No.55 of 2001. On behalf of the second respondent – Insurance Company, no witnesses were examined, but 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, the Tribunal, taking into consideration that the age of the deceased was shown as 60 years in Ex.A3 – Post-mortem Examination Report and opining that no multiplier is provided for the persons aged 60 years, granted a sum of Rs.60,000/- and since at the inceptive stage Rs.50,000/- was already granted under no fault liability, a sum of Rs.10,000/- was awarded to the wife of the deceased who is the first petitioner. No amount was granted to the petitioners 2 to 5, who are the sons of the deceased, on the ground that they were all majors and not dependents on the deceased.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence at all and went wrong in granting very meagre amount.

9. It is no doubt true that in the year 2001 either in the II schedule to Section 163-A of the Act or in the decisional law that was holding field,

no multiplier was provided for the persons aged 60 years above, but in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1], multiplier '9' is provided for the age group of persons between 56 and 60 years. Therefore, now it has to be seen, what was the income of the deceased as on the date of his death? No documentary evidence is filed by the petitioners except PW.1 orally stating and PW.2 also supporting that the deceased was a drum beater. But, the same cannot be side lined as the very purpose for which the deceased was proceeding in the Auto was for getting the drums repaired. Therefore, taking that the deceased was earning Rs.2,000/- per month on his profession and deducting 1/3rd there from towards his personal expenses, taking his contribution at Rs.16,000/- per annum, the loss of dependency is worked out at Rs.1,44,000/- by applying the multiplier '9'. Besides the same, the first petitioner is also awarded Rs.50,000/- towards conventional sum making it a total compensation of Rs.1,94,000/-. Since under no fault liability a sum of Rs.50,000/- was already awarded, the same has to be deducted from Rs.1,94,000/-. The interest at 9% p.a., granted by the Tribunal is maintained on the amount of Rs.10,000/- granted by it, but the interest on the enhanced amount of Rs.1,34,000/- is awarded at 7.5% p.a., as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2].

10. Accordingly, the instant MACMA is partly allowed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 10.12.2015
Nsr

[1] (2009) 6 SCC 121

[2] 2013 ACJ 1403 = 2013(4) ALT 35