THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1351 OF 2005

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 13.04.2005, passed by the II Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Vijayawada, in M.V.O.P.No.194 of 2003, awarding compensation of Rs.2,64,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.5,00,000/- on account of the death of one Deeti Nageswara Rao (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that on 22.08.2002 while the deceased was proceeding on his motor bike at Ulavapalli, one mini van bearing No.AP31V 4747 of the first respondent came from opposite direction driven by himself in a rash and negligent manner and hit the motor bike of the deceased besides sumo van and trolley, as a result the deceased succumbed to injuries. The police registered a case in Crime No.45 of 2002 against the first respondent.

The petitioners are the dependants of the deceased and the deceased was the sole breadwinner of the family. Therefore, the petitioners prayed the Court to grant compensation of Rs.5 lakhs.

4. The first respondent remained *ex parte* before the Tribunal.

5. The brief averments made in the written statement filed by

the second respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age and income of the deceased and also the relationship of the petitioners with the deceased. The respondent contended that there is no rash and negligence on the part of the first respondent while driving the vehicle, but the accident occurred due to negligent driving of the deceased. The owner and insurance company of the motor bike of the deceased are also necessary parties. The compensation claimed by the petitioners is excessive and arbitrary. Therefore, prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed four issues and to substantiate the claim, PWs 1 to 3 were examined and got marked Exs.A.1 to A.7. On behalf of the second respondent, no oral evidence was adduced but got marked Ex.B.1 by consent.

7. Basing on the evidence on record, the Tribunal held that the deceased died in the accident only due to rash and negligent driving of the first respondent, as such both the respondents are jointly liable to pay compensation, and awarded compensation of RS.2,64,000/- along with interest at 9%.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeal.

9. The learned counsel for the appellants argued that the deceased was running a fair price shop and earning Rs.14,000/- per month; that the deceased was also hiring polish machines and thereby earning Rs.250/- per day; that the Tribunal without considering the income sources of the deceased, fixed the gross earnings of the deceased at Rs.2250/- per month instead of

Rs.7,000/- and above; that in view of the view of the judgment of the Hon'ble Supreme Court reported in *Sarla Verma and others Vs. Delhi Transport Corporation and another*[1]*,* 1/4th of the income of the deceased has to be deducted as the dependants are more than five; that the Tribunal has considered the loss of estate and consortium but granted meagre amount, therefore prayed the Court to grant Rs.50,000/- in view of the judgment of the Hon'ble Supreme Court reported in *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others*[2]*,* and finally, prayed the Court to enhance the compensation.

10. The appeal against first respondent is dismissed for default vide Court Order dated 03.01.2012. Notice to second respondent served, but there is no representation.

11. Having regard to the submissions made by the learned counsel for the appellants, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants are entitled for enhancement of compensation?

12. **<u>Points</u>**:

A perusal of the evidence shows that PW1 is the wife of the deceased and PW2 is the eyewitness to the accident. There is no dispute about the accident which was caused due to rash and negligent driving of the first respondent. Further, there is no dispute that the offending vehicle was insured with the second respondent.

13. The learned counsel for the appellants argued that the deceased was running a fair price shop and earning Rs.14,000/- per month and that the deceased was also hiring polish machines and thereby earning Rs.250/- per day, and relied on a decision reported in *Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited*[3], wherein the Hon'ble Supreme Court extracted Paras 17 and 18 of a judgment rendered in *Santosh Devi Vs. National Insurance Company Limited [(2012)6 SCC 421]* as follows:

> "17. Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.
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> 18. Therefore, we do not think that while making the observations in the last three lines of para 24 of *Sarla Verma* judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

14. In the present case, PW3 is the witness who stated that the

deceased was earning Rs.1400/- as commission from fair price shop and also getting income from hiring four polish machines at Rs.250/- per day. However, to substantiate those aspects, the petitioners have not produced any proof that the deceased was earning more than Rs.2,250/- per month, which amount the tribunal considered as gross earnings of the deceased. Further, the case-law cited by the learned counsel for appellants in *Syed Sadiq's case* (3 supra) has no application to the present facts of the case. However, keeping in view of the evidence adduced by PW3 who is an employee of Civil Supplies department, an amount of Rs.25,000/- is awarded towards loss of future earnings.

15. Admittedly, the dependants are more than four. In view of *Sarla Verma's case* (1 supra), the relevant multiplier for the age group of 46 to 50 years is "13". Therefore, after deducting $1/4^{th}$ towards personal expenses, the contribution of the deceased comes to Rs.1687.50 Ps. per month (Rs.2,250/- X 1/4) and per annum it comes to Rs.20,250/-. Thus, the loss of earnings comes to Rs.2,63,250/- (Rs.20,250/- x multiplier "13").

16. The Tribunal awarded Rs.30,000/- towards loss of estate and consortium. In view of the judgment of the Hon'ble Supreme Court i n *Ramilaben Chinubhai Parmar and others Vs. National Insurance Company and others* (2 supra), an amount of Rs.50,000/- is awarded in lump sum towards conventional amount.

17. Thus, the total compensation payable to the petitioners/claimants comes to Rs.3,38,250/- (Rs.2,63,250/- + Rs.25,000/- + Rs.50,000/-).

18. Accordingly, the compensation awarded by the Tribunal is

enhanced from Rs.2,64,000/- to Rs.3,38,250/-. For the enhanced amount of Rs.74,250/-, an interest at 7.5% is awarded in view of the judgment of the Hon'ble Supreme Court in *Sarla Verma's case* (1 supra) from the date of appeal till the date of realisation. It is made it clear that the first appellant/first petitioner is exclusively entitled to the conventional amount of Rs.50,000/- along with interest besides her apportioned compensation.

19. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

30.06.2015
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<u>M.A.C.M.A. No. 1351 OF 2005</u>

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[1] (2009)6 SCC 121

[2] 2014 ACJ 1430

[3] (2014) 2 S.C.C. 735