HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1023 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,41,000/- towards compensation as against the claim of Rs.3,50,000/-, laid under Section 166-A of the Motor Vehicles Act, 1988, seeking enhancement of the same, petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 01-02-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Kakinada, in O.P. No.419 of 2003.

2. The appellants herein are the petitioners (claimants) in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are rider, owner and insurer, respectively of the motor cycle (Hero Honda - Splendour) bearing No.AP-5-N-358, are respondent Nos.1 to 3 respectively.

3. The appellants are father, mother and brother, respectively, of Durga Prasad, 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. The facts in brief are that on 23-03-2003, at about 6-30 p.m., while Durga Prasad along with his friend was proceeding to their

houses on bicycles after completion of the work and when they reached in between Samalkota - Peddapuram by-pass road, respondent No.1 driving the motorcycle bearing No.AP-5-N-358 in a rash and negligent manner at high speed, hit him, due to which, he sustained serious injuries and immediately he was shifted to Government General Hospital, where he succumbed to the injuries on the next day i.e., 24-03-2003, while undergoing treatment.
The Station House Officer, Peddapuram registered a case in Crime No.58 of 2003 for the offence punishable under Section 304 IPC against respondent No.1.

6 . The petitioners projecting that Durga Prasad, who is hereinafter referred to as 'deceased', was 19 years old, died in unmarried status, earning Rs.100/- per day as Carpenter, sought Rs.3,50,000/- towards compensation from respondents 1 to 3, who are driver, owner and insurer, respectively, of the Herohonda motorcycle

7 . Respondent No.1, owner of the motorcycle involved in the accident, filed counter opposing the claim disowning rash and negligent driving attributed to him. Even otherwise, according to him, since the vehicle is insured with respondent No.3, respondent No.3 alone is liable to pay compensation, if any.

8. Respondent No.2, owner of the motorcycle, also filed counter on the same lines besides contending that the claim is highly excessive and exorbitant and finally sought to dismiss the claim petition.

9 . Respondent No.3 opposed the claim raising various pleas and reserving its right to seek protection under Sections 147, 149(2) and 170 of the Motor Vehicles Act and has also obtained permission

by filing I.A. No.693 of 2004, under Section 170 of the MV Act, before the Tribunal.

10. The Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1, who is mother of the deceased, examined herself as PW.1, besides examining one M.R. Durga Prasad, an eyewitness to the occurrence, as PW.2, and marked Exs.A-1 to A-4. On behalf of the respondents, no witnesses were examined, however, a copy of the insurance policy of the motorcycle involved in the accident, was marked as Ex.B-1 on consent.

11. The Tribunal, on issue No.1, on appraisal of evidence, through PW.2 and Exs.A-1 to A-4, held it in affirmative. On issue No.2, though, the Tribunal has taken monthly earnings as Rs.1,800/- per month as a Carpenter, deducted 1/3rd therefrom towards his personal expenses and taken the remainder of Rs.1,200/- per month as contribution of the deceased to his family, but observing that he died in 'unmarried status' and as parents required his support during their old age, fixed his contribution to the family at Rs.7,00/- per month or Rs.8,400/- per annum and by applying multiplier '15', taking the age of the 1st petitioner as 40 years, awarded Rs.1,26,000/- towards loss of dependency. The tribunal also granted Rs.15,000/- towards transportation of dead body and funeral expenses and Rs.10,000/- towards loss of estate, and, thus, awarded a total sum of Rs.1,41,000/- towards compensation with interest at 9% per annum by making respondent Nos.1 to 3 jointly and severally liable to pay the said amount.

12. Not satisfied with the above amount of compensation awarded by the Tribunal, the instant appeal is preferred by the petitioners contending in the grounds of appeal that the Tribunal

ought to have taken the earnings of the deceased at Rs.3,000/- per month as he was a skilled worker and the Tribunal ought not to have reduced contribution of the deceased to his family to 50% of the assessed earnings and ought to have granted higher rate of interest and even multiplier ‘15’ adopted by the Tribunal is incorrect and ought to have taken the age of the deceased in arriving at the suitable multiplier, and, therefore, sought to grant the balance amount by way of enhancement.

13. Heard Sri N.V. Anantha Krishna, learned counsel for the petitioners (appellants), and Sri Harinath Gupta, learned counsel for the 3rd respondent - Insurance company.

14. Despite service of notice, none appears on behalf of respondent Nos.1 and 2.

15. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners.

16. The short point that arises for consideration is whether the amount awarded by the tribunal is just and adequate in the circumstances occurring in the instant case?

17. A perusal of the order under challenge would reflect that the Tribunal, somehow, lowered the contribution of the deceased to Rs.700/- per month despite arriving at Rs.1,200/- per month after deducting 1/3rd from Rs.1,800/- as his monthly earnings on an average as Carpenter. Though, the Tribunal assigned the reason that during old age of the petitioners only, the deceased would have supported them had he been alive, in taking Rs.700/- per month as his contribution, but, it is not in accordance with the established

principles of law.

18. Admittedly, the deceased died in unmarried status. Therefore, 50% of his monthly income has to be deducted towards his personal expenses, in which case, it would be Rs.900/- per month and Rs.10,800/- per annum as the Tribunal fixed his monthly earnings at Rs.1,800/-. Since the deceased was an earning member and aged
19 years, the Hon'ble Apex Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**, while observing in paragraph Nos.16 to 18 that selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants held thus:

> "16. Admittedly both the parents, Ist appellant – Amrit Bhanu Shali (father) and 2nd appellant –
> Smt. Sarlaben (mother) have been held to be dependents of deceased – Ritesh Bhanu Shali and, therefore, the Tribunal held that the Ist appellant and 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant – Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant – Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents, i.e., father and the mother, the Tribunal rightly restricted the 'personal and living expenses' of the deceased to 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in the case of Sarla Verma (supra).
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> 17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.
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> 18. In the case of Sarla Verma, (AIR 2009 SC 3104 : 2009 AIR SCW 4992) (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the

> table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

19. Thus, the relevant multiplier is '18', as provided in the table formulated by the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**. When multiplier '18' is applied to the remainder, the loss of dependency works out to Rs.1,94,400/- and the same is accordingly granted. The amount of Rs.5,000/- awarded by the Tribunal towards transport of dead body and funeral charges is enhanced to Rs.10,000/- since the deceased survived for a day and succumbed to injuries while undergoing treatment on the next day of the accident. The amount of Rs.10,000/- awarded by the Tribunal towards loss of estate, is enhanced to Rs.15,000/-.

20. Thus, the petitioners are entitled to a total compensation of Rs.2,19,400/- (Rupees two lakhs nineteen thousand and four hundred) as against Rs.1,41,000/- 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.**

21. 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.

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

A. SHANKAR NARAYANA, J

March 11, 2015.

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