IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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M.A.CMA.No.1397 OF 2015

Between:

M/s. National Insurance Company Limited

.. Appellant

and

Chakali Lakshmi Devi and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: August 10, 2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? No

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? No

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1397 OF 2015

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Aggrieved by the order and decree, dated 09.03.2015, in M.V.O.P.No.319 of 2013 passed by the Chairman, Motor Accident Claims Tribunal, Kurnool – cum – VI Additional District Judge, Kurnool, the instant appeal is preferred by the Insurance Company on the ground that the compensation awarded by the Tribunal is on higher side.

2. The appellant herein, who is the Insurance Company, is respondent No.2; respondent Nos.1 to 6 are the petitioners; and respondent No.7, who is the owner of car that involved in the accident, is respondent No.1, in the M.V.O.P. before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as arrayed in the M.V.O.P. before the Tribunal.

4. The facts in brief are that on 03.03.2013, one Chakali Venkata Swamy after finishing the K.C. Canal Luskar duty, started to Kurnool Office on his motorcycle bearing registration No.AP 21 AL 8157 and at about 08:30 AM, while he was proceeding near Unnath Bricks at

Mamidalapadu Village, car bearing registration No.AP 21 AC 0456 coming from behind driven at high speed and in a rash and negligent manner, hit the motorcycle, due to which, the said Chakali Venkata Swamy fell down on the road and died instantaneously. The petitioners, who are the wife and children of the deceased Chakali Venkata Swamy, claiming that the deceased was 52 years old earning Rs.26,030/- per month as Luskar in K.C. Canal Sub-division, Kurnool, sought a total sum of Rs.31,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988, from respondent Nos.1 and 2, who are the owner and insurer, respectively, of the car.

5. Respondent No.1 appears to have not filed any counter, despite continuing his appearance. Respondent No.2 resisted the claim by raising various pleas in his counter and also attributing rash and negligent driving to the deceased.

6. Basing on the said pleadings, Tribunal has framed four issues in the direction of accounting for responsibility of the accident. During enquiry, to substantiate the claim, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A6 were marked besides documentary evidence in Ex.X1, attested copy of Service Register relating to the deceased. On behalf of

the respondents, no oral evidence was let in, but the copy of Insurance Policy was marked as Ex.B1.

7. The learned Tribunal, on appraisal of evidence let in by the petitioners, held issue Nos.1 and 2 in favour of the petitioners. On issue No.3, basing on Ex.X1 entries, it has taken the age of the deceased as 52 years and basing on the law laid down by the Honourable Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]**,** since the dependants are numbering six, deducted 1/4th of the income of the deceased towards his personal expenses and having taken the balance 3/4th as contribution to the family, worked out the annual contribution of the deceased to the family at Rs.2,34,264/- and as per the very same decision, by applying multiplier 11, arrived the loss of dependency at Rs.25,76,904/-. Besides that amount, it has also granted a sum of Rs.30,000/- towards loss of consortium, funeral and other expenses and thus, determined the total compensation at Rs.26,06,904/- and awarded interest at 9% per annum.

8. It is the aforesaid order, which is under challenge in the instant appeal by the Insurance Company contending that the Tribunal ought to have deducted 1/3rd instead of 1/4th towards personal expenses of the deceased, since respondent No.4, who is the major son of the deceased, was given compassionate

appointment. It is also contended that the income tax payable by the deceased was not deducted and therefore, requested to deduct 10% of the annual income, which works out to Rs.31,236/-. It is also contended that the Tribunal awarded interest at 9% per annum, which is at higher side, instead of 6% per annum and therefore, sought to modify the impugned order and decree.

9. Heard Sri T. Ramulu, learned Standing Counsel for the appellant, and Sri C. Sai Vishnu, learned counsel for respondent No.1. Learned counsel for appellant has stated that he is not pressing the instant appeal against respondent No.7, who is the owner of the car. Hence, this appeal stands dismissed against respondent No.7. However, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[2], such dismissal is of any consequence in deciding the controversy herein.

10. Perused the impugned order and the evidence on record, both, oral and documentary, let in by the petitioners.

11. The submissions of the learned counsel for appellant are that the Tribunal ought to have deducted 1/3rd instead of 1/4th towards personal expenses of the

deceased for the reason that respondent No.4 herein, who is the son of the deceased, was given compassionate appointment, but we are not in agreement with that submission for the reason that the law laid down by the Honourable Apex Court in **Sarla Verma**'s case (supra) makes it permissible to deduct 1/4th towards personal expenses when the dependants are exceeding four in number and not exceeding six, irrespective of the fact whether the children of the deceased are given any employment or any other benefit. The second submission is that the Tribunal ought to have deducted 10% of the annual income towards income tax payable by the deceased, but, however, the material on record is inadequate to accede to the said request. In fact, a duty is cast on the Insurance Company to prove that the deceased was an income tax assessee and certain amount was being deducted from his salary towards income tax. In this appeal, relevant other factors are also not made available to this Court. Therefore, we are not in agreement with the said submission. The next submission of the learned counsel for appellant is that the Tribunal has awarded interest at 9% per annum, which is at higher side, instead of 6% per annum, as per the judgment of the Honourable Apex Court in **Sarla Verma**'s case (supra) and the learned counsel tried to convince us to apply the same rate of interest in the instant case also.

12. Learned counsel for respondent Nos.1 and 6 on the other hand supported the order of the Tribunal by contending that the interest awarded at 9% per annum by the Tribunal is in accordance with the recent decisions of the Honourable Apex Court.

13. Keeping in view the legal principle laid down by the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**[3]**,** we are inclined to modify the rate of interest granted by the Tribunal by reducing the same from 9% per annum to 7.5% per annum. Thus, we are inclined to allow the appeal in part to the extent of reducing the rate of interest from 9% per annum to 7.5% per annum, while confirming the order under challenge in all other respects.

14. The appeal is accordingly allowed in part. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

August 10, 2015

MD

[1] (2009) 6 SCC 121

[2] 2001 (1) ALT 495 (D.B.)

[3] (2013) 9 SCC 54