

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. Nos.1089, 1097 AND 1102 OF 2006

COMMON JUDGMENT:

All these three appeals have been preferred seeking enhancement of compensation not satisfied with the amounts of Rs.50,000/-, Rs.1,32,000/- and Rs.1,32,000/- respectively, granted by the learned Chairman, Motor Accidents Claims Tribunal - cum -

I Additional District Judge, Chittoor, by separate orders, dated 07-02-2006, in M.V.O.P. Nos.341, 345 and 340 of 2000, respectively, as against their claims of Rs.2,00,000/-, Rs.2,50,000/- and Rs.2,50,000/-, respectively, laid under Section 166 of the Motor Vehicles Act, 1988.

2. Since all the three claims arise out of one and the same accident, though, the Tribunal has disposed of them by separate orders, it would be convenient to dispose of all the appeals by a common judgment.

3. The facts, in brief, are that the petitioner in M.V.O.P. No.341 of 2000, was a coolie, and the deceased in two other M.V.O.P. Nos.345 and 340 of 2000, were agriculturist - cum - business man in poultry and agriculturist - cum - cleaner, respectively; while so, on 21-08-1999, there was a collision between a lorry bearing No.TN-07-C-7566 and a van bearing No.AP-03-U-1353 on Chittoor - Chennai National Highway, near Karanthangal koot road, resulting in injuries to the petitioner in MVOP No.341 of 2000 and death of one Jayachandra and K. Chitti Babu, respectively, and their legal heirs filed MVOP Nos.345 and 340 of 2000, respectively. Hence, the petitioners sought compensation as indicated above.

4. Respondent Nos.1 and 3, who are owner of the Van and the lorry, respectively, that involved in the accident remained, *ex parte* before the Tribunal.

5. Respondent Nos.2 and 4 is insurer of both the vehicles i.e., the van and the lorry, as such, it filed a common counter opposing the claims.

6. Before the Tribunal, two identical issues were framed in all the O.Ps. and similar finding was tendered on issue No.1 by elaborately discussing the nature of accident and the manner in which it has taken place and based on the evidence of PWs.1 and 2 and Exs.A-1, A-2 and A-5, which are certified copies of F.I.R. Chargesheet and MVI's report, respectively, finding that only due to rash and negligent driving of the lorry driver, the accident had occurred, thus, held issue No.1 in favour of the petitioners and against respondent Nos.3 and 4, owner and insurer of the lorry respectively, while dismissing the claim against respondent Nos.1 and 2, owner and insurer of the van, respectively.

7. On issue No.2, the Tribunal, in MVOP No.341 of 2000, keeping in view Ex.A-3, injuries mentioned in the copy of the wound certificate, as the petitioner sustained fracture and simple cut injury, and considering the evidence on record through PW.4, medical officer, but, however, discarding the disability spoken to by PW.4, granted an amount of Rs.30,000/- towards pain and suffering and Rs.20,000/- towards medical expenses, and, thus, granted a total sum of Rs.50,000/- towards compensation.

8. On issue No2, in MVOP Nos.345 and 340 of 2000, the Tribunal

considering the ages of the deceased, who were 20 and 19 years, respectively, at the relevant time, and since the petitioners therein, who are legal heirs of the respective deceased, failed to submit any documents or legally acceptable evidence as to the income they were deriving, taking their notional income at Rs.1,500/- per month and after deducting $\frac{1}{3}^{\text{rd}}$ therefrom (Rs.1,500/- x $\frac{1}{3}$) i.e., Rs.500/-, towards their personal expenses, and considering the age of the younger parent of the respective deceased, by applying relevant multiplier, granted a total sum of Rs.1,32,000/-, in each O.P., towards compensation with interest at 7.5% per annum with further directions as to apportionment of the compensation.

9 . Dissatisfied with the amounts awarded by the Tribunal towards compensation, these appeals have been preferred by the respective petitioners contending that meagre amount is granted and the Tribunal despite PW.4's evidence as to the fact that the petitioner in O.P. No.341 of 2000 has suffered 45% permanent disability, still, discarded the same without assigning any plausible reasons. Further, in O.P. Nos.345 of 2000 and 340 of 2000, the Tribunal granted meagre amount, though the bread earners of their families died in the accident.

10. Heard Sri K. Suresh Kumar Reddy, learned counsel for the appellants in all the appeals, and Smt. S.N. Padmini, learned counsel for respondent Nos.2 and 4.

11. Respondent Nos.1 and 3 in M.A. C.M.A. Nos.1089 of 2006 and respondent No.3 in M.A. C.M.A. Nos.1097 and 1102 of 2006 are not effected with notice. However, it makes no difference in view of the fact that they remained *ex parte* before the Tribunal.

12. Perused the orders under challenge and the material

available on record.

13. It is not in dispute that the deceased in O.P. Nos.345 and 340 of 2000, died in unmarried status.

14. The claims against respondent Nos.1 and 2 were dismissed by the Tribunal and liability was fixed on respondents 3 and 4 alone.

M.A. C.M.A. No.1089 of 2006:

15. Turning to the appeal claim in the first appeal i.e., M.A. C.M.A. No.1089 of 2006, Ex.A-3 would show description of injuries as crest injury to left ankle joint, fracture to right thigh and cut injury to scalp at left side frontal region about 5 CMs. into bone deep. It is no doubt true, PW.4 is not a Member of the Medical Board and though, he asserts in his chief-examination that the petitioner suffered 45% permanent disability, he admits in his cross-examination that the petitioner had suffered 10% disability on the left foot and 5% disability of the posterior skin. Thus, there is no consistency in the injuries spoken to by PW.4 and that that was the reason why the Tribunal did not believe the evidence of PWs.4 and 5 and awarded the amounts as mentioned above.

16. Coming to the amounts awarded by the Tribunal are whether just and reasonable, the Tribunal has granted Rs.30,000/- for pain and suffering for fracture of left thigh and two other injuries and Rs.20,000/- towards medical expenses. As seen from the nature of injuries, there are two grievous injuries. Therefore, the amount of Rs.30,000/- granted by the Tribunal is enhanced to Rs.40,000/- construing the same as the amount for both the fractures. Considering the bone deep cut injury to scalp on left side frontal region, a sum of Rs.5,000/- is granted for the same. The Tribunal has

not granted any amount towards extra-nourishment, for which a sum of Rs.10,000/- is granted. Towards transport charges, no amount was granted by the Tribunal, therefore, a sum of Rs.5,000/- is granted under this head. The Tribunal has already awarded a sum of Rs.20,000/- towards medical expenses, which is not disturbed.

17. Thus, the petitioner is entitled to a total compensation of Rs.80,000/- (Rupees eighty thousand only) as against Rs.50,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest on the entire compensation at 7.5% per annum, as against 9% awarded by the Tribunal, from the date of petition till realisation.

M.A. C.M.A. Nos.1097 AND 1102 OF 2006:

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18. It is not in dispute that both the deceased died in unmarried status. Except the ages of the deceased that the deceased in M.A. C.M.A. No.1097 of 2006 was 20 years old and the deceased in M.A. C.M.A. No.1102 of 2006 was 19 years old, the facts in both the matters are identical. However, the approach of the Tribunal is somewhat not in accordance with the law laid down by the Hon'ble Apex Court. The Tribunal, of course, right in granting the amounts mentioned above and computing compensation by relying on the law then holding the field.

19. Be that as it may, since there is no proof as to income, in both the appeals, the notional income of the deceased in each case at Rs.1,500/- per month, as taken by the Tribunal, cannot be faulted with. But, however, instead of deducting 1/3rd towards personal expenses of the deceased, in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, half of the amount therefrom is deducted towards personal expenses and

worked out contribution of the deceased to their family at Rs.750/- per month and Rs.9,000/- per annum in both the cases. Since the age of the deceased has to be considered for relevant multiplier, multiplier '18' is applicable for the age group of the deceased, who are 20 and 19 years respectively, as per the decision of the Hon'ble Apex Court in **Sarla Verma's Case** (Supra 1), in which event, the petitioners in each appeal are entitled to Rs.1,62,000/- (Rs.9,000/- x 18) besides Rs.5,000/- towards funeral expenses.

20. Thus, the compensation granted by the Tribunal at Rs.1,32,000/- is enhanced to Rs.1,67,000/- (Rupees one lakh sixty seven thousand only) in both the appeals with interest at 7.5% per annum as against 9% granted by the Tribunal. The petitioners in both the appeals shall apportion their respective shares of compensation as ordered by the Tribunal.

21. Thus, all the appeals are allowed in part modifying the orders under challenge 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 these appeals stand disposed of.

A. SHANKAR NARAYANA, J

February 12, 2015.

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