

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2755 OF 2005

JUDGMENT:

The New India Assurance Company Limited preferred the instant Civil Miscellaneous Appeal aggrieved by the order and decree, dated 28.04.2005 in O.P. No.1273 of 2002 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Nalgonda, whereby and whereunder, a sum of Rs.6,97,676/- was awarded towards compensation as against the claim of Rs.5,50,000/- sought for by the petitioners under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the A.P. Motor Vehicles Rules 1989 read with Section 140 of the Act. Thus, on the ground that the compensation awarded by the Tribunal is excessive and arbitrary, the instant appeal is preferred by the insurance company.

2. No violations have been complained and not agitated as a ground attacking the order and decree under challenge.

3. The appellant herein, which is insurer, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 6, who are wife and daughters, respectively, of B. Mallaiah, who died in the accident, are petitioners (claimants) and respondent No.7, who is owner of the car bearing No.AP-28-F-5588, is respondent No.1.

4. The facts, in brief, are that on 14-07-2002, at about

7-30 p.m., while B. Mallaiah, husband of the petitioner No.1, was driving the scooter bearing No.AP-24-C-4631, on which petitioner No.1 was travelling as a pillion rider, on the outskirts of Cherlapally, car bearing No.AP-28-F-5588 driven by its driver in a rash and negligent manner at high speed, hit the scooter, due to which, both fell down and sustained injuries and Mallaiah succumbed to injuries in the Government Head Quarters Hospital, Nalgonda at 10-00 p.m., and a case in crime No.47 of 2002 was registered for the offence punishable under Section 304-A of the Indian Penal Code by the police of Nalgonda Rural Police Station against the driver of the car.

5 . The petitioners being dependants and heirs of the deceased claiming that the deceased was working as Attender in I.T.I. Nalgonda, drawing a salary of Rs.7,601/- per month, sought a total sum of Rs.5,50,000/- towards compensation against respondent Nos.1 and 2, who are owner and insurer of the car, respectively.

6. Before the Tribunal, respondent No.1 remained *ex parte*.

7 . Respondent No.2 opposed the claim by raising various claims.

8. The Tribunal formulated only one point for determination as to whether the petitioners are entitled to compensation of Rs.5,50,000/- or Rs.7,00,000/-?

9. Based on the submissions of the learned counsel for the petitioners and the evidence of PW.1, the Tribunal recorded a finding that respondent Nos.1 and 2 are liable to pay the compensation as the accident occurred due to rash and negligent

driving of the driver of the car and the deceased has to be construed as a third party so far as insurer is concerned. Concerning determination of compensation, the Tribunal has taken Rs.7,565/- as monthly earnings of the deceased by deducting Rs.35/- from the gross salary of Rs.7,601/-, which relate to festival advance of Rs.15/- and State Insurance deduction of Rs.20/- and after deducting $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses of the deceased, arrived at Rs.5,043/- per month towards his contribution to the family and by applying multiplier '11', worked out the loss of dependency at Rs.6,6676/- (Rs.6,65,676/-) besides Rs.15,000/- towards consortium to the petitioner No.1 and Rs.15,000/- towards love and affection, care, guidance, estate etc., and, thus, granted a total sum of Rs.6,96,676/- and apportioned the same among the petitioners.

10. It is the aforesaid order, which is under challenge in the instant appeal stating that the Tribunal ought to have taken net salary of the deceased but not gross salary in computing the compensation and multiplier '11' ought not to have been applied as the earnings of the deceased exceeds Rs.40,000/- per annum and multiplier '7.68' ought to have applied, sought to modify the order.

11. Heard Sri Naresh Byrapaneni, learned counsel for the insurer (appellant), and Sri Chalakani Venkat Yadav, learned counsel for the petitioners (respondents). Memo in USR No.318 of 2012 is filed by the learned counsel for the insurer stating that respondent No.1 (respondent No.7 herein), owner of the car, is not a necessary party.

12. During the course of arguments, learned counsel for the insurer fairly conceded that in view of the ratio laid down by the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, the relevant multiplier being '13' for the age group of the deceased, who was 50 years at the relevant time as per Ex.A-4,

charge sheet, and gross salary has to be taken into consideration for determining the compensation and in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, even 15% amount has to be added towards future prospects for the persons between the age group of 50 and 60, the cause in the instant appeal would not survive.

13. Recording the submissions of the learned counsel for the insurer, the appeal is dismissed confirming the order under challenge. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

A. SHANKAR NARAYANA, J

Nov 25, 2015.

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