HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos. 541 of 2006 and **2996 of 2008**

COMMON JUDGMENT:

Both these appeals arise from one and the same order and decree dated 06.01.2006 in O.P. No.475 of 2004 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-The Principal District Judge, Medak at Sangareddy (for short 'the Tribunal'). Respondent No.2-United India Insurance Company Limited, having got aggrieved that the amount of Rs.4,38,000/- as compensation granted by the Tribunal was excessive and arbitrary, preferred the appeal in M.A.C.M.A. No.541 of 2006 (for short, 'the former appeal'). Dissatisfied with the said amount as compensation, claimants preferred the appeal in M.A.C.M.A.No.2996 of 2008 (for short, 'the latter appeal') seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P before the Tribunal.

3. The facts, in brief, are that on 28.03.2004 at about 8.30 P.M. one K.Narsimha Reddy (husband of petitioner No.1), whose parents are petitioner Nos.2 and 3, along with another was traveling by Hero Honda Motor Cycle bearing registration No.AP-23-F-4898 from Digwal to Sadasivpet on N.H.No.9, during which time a jeep bearing registration No.AP-9-D-4662 driven in a rash and negligent manner at high speed dashed the said motor cycle from behind, due to which the said Narsimha Reddy and the driver of the motor cycle died. The Station House Officer, Koheer Police Station registered a case in Crime No.41 of 2004 under Section 304-A of the Indian Penal Code against the driver of the jeep. The petitioners claiming that the deceased was working as Office Assistant in the Arunodaya Junior College, Hyderabad, and was earning Rs.5,000/- towards salary and tuition fees and used to contribute almost his earnings to petitioner Nos.1 to 3, sought Rs.6,00,000/- as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988.

4. Respondent No.1, owner of the jeep remained *ex parte.* Respondent No.2 opposed the claim raising various pleas and sought to dismiss the claim petition.

5. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, petitioner No.1, besides examining herself as P.W.1, examined Bakka Reddy and B.Hari as P.Ws.2 and 3 respectively, and marked Exs.A.1 to A.7. Respondent No.2 filed Ex.B.1 with consent, which is the copy of insurance policy.

6. The Tribunal on appraisal of evidence held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, taking the age of deceased as 28 years, considered the multiplier '17.08' basing on the decision of this Court in **Bhagawan Das v. Mohd. Arif** and also in terms of the decision of the Hon'ble Supreme Court in **General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others,** and fixed the monthly earnings of the deceased at Rs.3,000/- by discarding Ex.A.7-Salary Certificate, said to have issued by the Principal, and the evidence of P.W.3, one of the employees of the said College, by assigning reasons determined Rs.4,08,000/- towards loss of dependency, besides granting Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, and, thus, granted a total sum of Rs.4,38,000/- as compensation with interest at 7.5% per annum from the date of petition till realization.

7. The aforesaid order, is under challenge in both the appeals by the respective parties. In the former appeal, the insurance company, challenging the quantum, contends that the Tribunal went wrong in fixing the monthly earnings of the deceased at Rs.3,000/-, in the absence of proof for the same, instead of fixing Rs.1,500/- per month as per the schedule, and, therefore, sought to modify the order and to reduce the compensation awarded by the Tribunal. In the latter appeal, the claim petitioners contend that the Tribunal without properly appreciating the evidence on record, excluded the evidence of P.W.3 and rejected Ex.A.7, despite P.W.3 working in the said Arunodaya Junior College, in which the deceased was working as Office Assistant and was drawing a monthly earnings at Rs.5,000/-, and, therefore, sought to modify the order and grant the balance amount.

8. Heard Sri N.Mohan Krishna, learned counsel for respondent No.2, and Sri R.Vinod Reddy, learned counsel for the petitioners. Though, notices were served on respondent No.1, owner of the jeep, none appears for him. However, respondent No.1 remained *ex parte* before the Tribunal.

9. Perused the order and evidence on record let in by the petitioners. Admittedly, only on the quantum, the insurance company challenged the award of Tribunal. The Tribunal, in fact, discarded Ex.A.7 and excluded the evidence of P.W.3 observing that no document is filed to show the income of deceased either from agriculture or tuitions, though, P.W.1, wife of the deceased, stated that the deceased was doing agriculture and also conducting tuitions and in the absence of such proof the Tribunal, by guesswork, has fixed the monthly earnings of the deceased at Rs.3,000/-, which finding recorded by the Tribunal is well reasoned and well appreciated and, therefore, does not suffer from any legal infirmity warranting interference. It is to be observed that except filing Ex.A.7 no other document such as aquittance register or the receipts passed by the deceased in favour of the college management is forthcoming. Further, no documents are filed to show that the deceased owned agricultural lands. Therefore, the finding recorded by the Tribunal in rejecting Ex.A.7 and the evidence of P.W.3 and fixing the monthly income of the deceased at Rs.3,000/- is confirmed.

10. So far as the multiplier applied by the Tribunal is concerned, since the deceased was 28 years old on the date of accident, even as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another** the multiplier '17' is provided for the age group of persons between 26 and 30 years, and, therefore, the amount determined by the Tribunal at Rs.4,08,000/- towards loss of dependency cannot be faulted with.

11. So far as the conventional sums are concerned, the Tribunal granted Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, but no amount is granted towards funeral expenses. However, in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar & others v. National Insurance Company Limited & others,** a sum of Rs.50,000/- is awarded towards conventional sum in place of Rs.30,000/- granted by the Tribunal (Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate). Thus, the petitioners are totally entitled to Rs.4,58,000/- as against Rs.4,38,000/- granted by the Tribunal. The rate of interest granted by the Tribunal at 7.5% per annum, is maintained on the enhanced amount also.

12. In the result, M.A.C.M.A. No.541 of 2006 is dismissed for want of merits, and M.A.C.M.A. No.2996 of 2008 is allowed in part, and the award and decree dated 06.01.2006 passed by the Tribunal in O.P. No.475 of 2004 are modified, enhancing the compensation from Rs.4,38,000/- to Rs.4,58,000/- (Rupees Four lakh and fifty eight thousand only), with interest at the rate of 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **16.04.2015**

MVA

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A.C.M.A. Nos. 541 of 2006</u> <u>and</u> **<u>2996 of 2008</u>**

<u>Dt. 16.04.2015</u>

MVA