

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

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C.M.A. Nos.1016, 1017 AND 1018 OF 2004

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COMMON JUDGMENT:

Since these civil miscellaneous appeals arise out of one and the same accident, they are being disposed of by this common judgment.

2. These appeals have been preferred by the respective petitioners (claimants) in M.O.P. Nos.1719 of 2000, 318 of 2001 and 341 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Visakhapatnam, seeking enhancement of the compensation awarded therein through the separate judgments, dated 07-10-2003.

3. In C.M.A. No.1016 of 2004, appellant Nos.1 to 3 are the husband and children, respectively, of Lekkala Yerrayamma, who died in the accident. They laid claim in M.O.P. No.1719 of 2000 for grant of compensation of Rs.3,00,000/-, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the A.P. Motor Vehicle Rules, 1989. As against which, the Tribunal has granted Rs.50,000/- with interest at 9% per annum.

4. In C.M.A. No.1017 of 2004, appellant Nos.1 to 4 are the parents, brother and sister, respectively, of one Tangeti Narasinga Rao, who died in the accident. They laid the claim in M.O.P. No.318 of 2001 for grant of compensation of Rs.2,50,000/- under Section 166 of the Act read with Rule 455 of the Rules made thereunder. As against which, the Tribunal has granted Rs.1,47,000/- with interest at 9% per annum.

5. In C.M.A. No.1018 of 2004, the appellant is the father of one Lekkala Suryakala, who died in the accident. He laid the claim in M.O.P. No.341 of 2001 for grant of compensation of Rs.1,60,000/- under Section 166 of the Act read with Rule 455 of the Rules made thereunder. As against which, the Tribunal has granted a sum of Rs.79,000/- with interest at 9% per annum.

6. In all the appeals, respondent Nos.1 to 3, who are driver of the A.P.S.R.T.C. Bus bearing No.AP-10-Z-4198 that involved in the accident, Depot Manager of S. Kota Depot, Vizianagaram, and the Managing Director of A.P.S.R.T.C, Hyderabad (APSRTC), respectively, are respondent Nos.1 to 3, respectively, in all the M.O.Ps. before the Tribunal.

7. For the sake of convenience, the parties are hereinafter referred to as arrayed in their respective O.Ps.

before the Tribunal.

8. The fact-situation occurring in these matters is that on

19-06-1998 at about 11-10 a.m. while Lekkala Yerrayamma and her daughter Suryakala, along with their family members, were proceeding in the Car bearing registration No.AP-31-N-4371 driven by Tangeti Narasinga Rao from Singaraya village to Vizag via Kothavalasa, and when the car reached Addupalem village, Kothavalasa Mandal, at about 12-00 noon, APSRTC bus bearing registration No.AP-10-Z-4198 driven at high speed in a rash and negligent manner by its driver, dashed the car, due to which Lekkala Yerrayamma and her daughter, Lekkala Suryakala died instantly, and Tangeti Narsinga Rao, driver of the car, succumbed to injuries while undergoing treatment in K.G. Hospital, Visakhapatnam, whereas other inmates of the car sustained injuries.

9. The Station House Officer, Kothavalasa Police Station registered a case in Crime No.69 of 1998 for the offences punishable under Sections 304-A and 337 of Indian Penal Code (IPC) against driver of the APSRTC bus who is arrayed as respondent No.1 in all the matters.

10. The petitioners in M.O.P. No.1719 of 2000 (C.M.A. No.1016 of 2004), contending that Lekkala

Yerrayamma, was running a fancy and bangles store at her house, earning not less than Rs.70/- to 100/- per day and she used to maintain the family with her earnings and also the earnings of her daughter, Suryakala and husband - petitioner No.1, sought Rs.3,00,000/- towards compensation against the respondents, jointly and severally.

11. The petitioners in M.O.P. No.318 of 2001 (C.M.A. No.1017 of 2004) contending that Tangeti Narasinga Rao was 22 years old at the relevant time, earning Rs.2,000/- per month as taxi driver besides over time allowance and batta. They also stated that petitioner No.1 is the mother of Narasinga Rao, and petitioner Nos.2 and 3, who are his father and brother, are sick persons and petitioner No.4 is an unmarried sister. Therefore, they sought Rs.2,50,000/- towards compensation against the respondents, jointly and severally.

12. The petitioner in M.O.P. No.341 of 2001 (C.M.A. No.1018 of 2004) contending that Lekka Surya Kala was hale and healthy, studied tenth standard and used to undertake tailoring and embroidery work and earn Rs.2,000/- per month. Therefore, he sought Rs.1,60,000/- towards compensation against the respondents, jointly and severally.

13. Against respondent No.1, driver of the APSRTC

bus that involved in the accident, all the claim petitions were dismissed as abated.

14. As seen from the orders under challenge, respondent No.2, Depot Manager of S. Kota APSRTC Bus Depot, Vizianagaram, remained *ex parte* in all the claim petitions.

15. Respondent No.3, Managing Director of APSRTC, Hyderabad, alone filed its counter resisting the claim.

16. It is stated that respondent No.1 being driver of the APSRTC bus, belonging to S. Kota Depot, was proceeding towards Araku from Visakapatnam and when the bus reached Addupalem village, the said car was coming in the opposite direction, driven at high speed, and observing the same, respondent No.1 cautiously taken the bus towards left side of the road and when both the vehicles were about to cross each other, since driver of the car lost control, as there were ditches on the road, it hit right side portion of the bus resulting in accident, and, thereby, claimed that driver of the bus was not responsible for taking place of the accident. It is also stated that in case of collision, both the owners and insurers of the vehicles have to be added as necessary and proper parties, and, on that ground, respondent No.3 claims that the claim petitions were misconceived and bad for non-

joinder of necessary and proper parties. It is also stated that 3rd respondent has deposited Rs.50,000/- each, under no fault liability, in MOP Nos.1044 of 1998, 1043 of 1998 and 1042 of 1998, respectively.

17. The Tribunal, based on the aforesaid pleadings, which are identical in all matters, framed three identical issues, thus:

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C.M.A. No.1016 of 2004 (M.O.P. No.1719 of 2000):

“(1) Whether the accident occurred due to the rash and negligent driving of the R.T.C. Bus Bearing No.AP.10 Z 4198 by the first respondent on 19.6.98 at 12 Noon resulting in the death of Lekkala Yerrayamma ?

(2) Whether the Petitioners are entitled to any compensation and if so from whom ?

(3) To what relief ?

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C.M.A. No.1017 of 2004 (M.O.P. No.318 of 2001):

“(1) Whether the accident occurred due to the rash and negligent driving of the R.T.C. Bus Bearing No: A.P. 10-Z-4198 by the first Respondent on 19.6.98 at 12 Noon resulting in the death of Tangeti Narasinga Rao ?

(2) Whether the Petitioners are entitled to any compensation and if so from whom ?

(3) To what relief ?

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C.M.A. No.1018 of 2004 (M.O.P. No.341 of 2001):

“(1) Whether the accident occurred due to the rash and negligent Driving of the R.T.C. Bus Bearing No: A.P.10-Z-4198 by the first Respondent on 19.6.1998 at 12 Noon resulting in the death of Lekkala Suryakala ?

(2) Whether the Petitioner is entitled to any compensation and if so from whom ?

(3) To what relief ?

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18. Heard Sri G. Rama Gopal, learned counsel for the petitioners (appellants) in all the appeals, and Sri Kambham Madhava Reddy, learned Standing Counsel for respondent No.3 - APSRTC in C.M.A. No.1016 and 1018 of 2004, and Sri S.V. Ramana, learned Standing Counsel for respondent No.3 - APSRTC in C.M.A. No.1017 of 2004, and perused the material on record.

19. Since respondent No.1, driver of the APSRTC bus that involved in the accident, died, the appeals against him were abated by the order, dated 28-01-2011.

20. Despite service of notice on respondent No.2, Depot Manager, S.Kota Depot, Vizianagaram, none appeared on his behalf.

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CMA No.1016 of 2004:

21. On issue No.2, the Tribunal has rejected the stand of the petitioners that Yerrayamma, who is hereinafter referred to as 'deceased', was running a fancy and bangles store at her house and earning Rs.70/- to 100/- per day, preferring Ex.B-2, certificate issued by the Secretary, Adavivaram Grama Panchayat, to the effect that the deceased did not obtain any licence for running a fancy and bangles store, and also pointing out certain probabilities from the evidence of PWs.1 and 2, and placing reliance on the decisions in **Bondu Venkata Rao and another v. Kalla Venkataramana and another** (2003(2) ALT 572), **Kamath Prasad and another v. Jagan and Company** (1996 ACJ 57) **Bhajan Lal Bishnoi v. Rajasthan State Road Transport Corporation** (1991 ACJ 651) and **A.P.S.R.T.C. v. Gayapu Roopavathi and others** (1994 ACJ 677), allowed the claim petition in part granting Rs.50,000/- towards compensation, which is thus:

“In the result, the petition is allowed in part granting compensation of Rs.

50,000/- (Rupees fifty thousand only) less Rs. 50,000/- (Rupees fifty thousand only) awarded in M.O.P. No: 1044/98, with proportionate costs and with subsequent interest at 9% P.A. from the date of the petition till the date of realization.”

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22. It is the aforesaid order, which is under challenge in this appeal by the petitioners contending in the grounds of appeal that the Tribunal has not awarded just and reasonable compensation since it has not appreciated the evidence on record in proper perspective.

It is also stated that the Tribunal has not awarded even the conventional amounts of Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. It is also stated that despite the fact that none is examined to prove Ex.B-2 contents, still, the Tribunal has taken the same into consideration without excluding it from the purview of appreciation of evidence in accordance with evidentiary rule. Hence, sought to grant the balance amount of Rs.2,50,000/-.

23. Now the point that arises for consideration is whether the petitioners are entitled to enhancement of compensation as sought for.

24. The deceased was 35 years old as on the date of her death as borne out from Ex.A-3, which is her postmortem examination report. It is needless to mention that as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**^[1], the relevant multiplier is '16', for the persons' in the age group between 31 and 35 years. Turning to the income of the deceased, evidence of her husband, PW.1, is clear that after her death, he has engaged a maidservant for Rs.600/- per month for cooking purpose, as he lost domestic assistance in his house. It is not in dispute that even his daughter, Lekkala Suryakala died in the very same accident and for the same M.O.P. No.341 of 2001 was filed and C.M.A. No.1018 of 2004 is preferred for enhancement of compensation.

25. The case of the petitioners is that the deceased was running a fancy and bangles store at her house itself and earning Rs.70/- to 100/- per day. Ex.B-1 was exhibited through RW.1, who is no other than conductor of the APSRTC bus that involved in the accident. According to respondent No.3, Ex.B-2 was issued by the Secretary, Adavivaram Gram Panchayat, stating that the deceased has not obtained any licence for running a fancy and bangles store.

But, admittedly, the Panchayat Secretary was not examined by the respondent as one of the witnesses,

and, therefore, Ex.B-2 has to be excluded from the purview of appreciation of the stand taken by the respondents. Even otherwise, there is no legally acceptable evidence proving that the deceased was running a fancy and bangles store at her house, and thereby, earning Rs.70/- to 100/- per day, as rightly observed by the Tribunal. Hence, the finding recorded by it to that effect cannot be faulted with.

26. In the above context, learned counsel for the petitioners placing reliance on a decision of the Allahabad High Court in **Oriental Insurance Co. Ltd. v. Sanjiv Jain and another**^[2] for the proposition that when both the husband and wife are earning members, wife in normal course would contribute to the household expenses 50% of her income and remaining 50% would utilize for her personal expenses and thus, the loss of dependency would be half of the income of the wife. The facts therein would reveal that the deceased (wife) was undertaking tuitions at her residence having studied M.A. Degree, and, therefore, her income was fixed at Rs.3,000/- per month and loss of contribution to the family at Rs.1,500/- per month. Though, nothing is forthcoming in the instant case to show that the deceased was an earning member, even otherwise, to consider the domestic services rendered by her which are invaluable in nature, and, thus, notionally her income can be construed as Rs.2,000/- per month or

Rs.24,000/- per annum.

When 50% thereof (Rs.2,000/- x 1/2) is deducted towards her personal expenses, her contribution to the family maintenance would work out to Rs.12,000/- per annum.

When multiplier '16' is applied, which is appropriate for the age group of the deceased as mentioned above, it works out to Rs.1,92,000/- (Rs.12,000/- x 16) towards total loss of dependency. Admittedly, the Tribunal has not awarded any amount towards conventional sums. Hence, a sum of Rs.50,000/- is awarded towards conventional sum following the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[3].

27. Thus, the petitioners are entitled to a total compensation of Rs.2,42,000/- (Rupees two lakhs forty two thousand) as against Rs.50,000/- awarded by the Tribunal, and the same is accordingly granted. However, the amount of Rs.50,000/- granted to the petitioners under Section 140 of the Act, towards 'no fault liability', in M.O.P. No.1044 of 1998 shall be deducted from the total compensation. The petitioners are entitled to interest at 7.5% per annum, as against 9% granted by the Tribunal, on the entire compensation, 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**^[4]. The compensation shall be apportioned between the

petitioners as directed by the Tribunal.

C.M.A. No.1017 of 2004:

28. On issue no.2, which concerns with determination of compensation, taking the age of T. Narasinga Rao, who is hereinafter referred to as 'deceased', as 23 years, rejecting the stand of the petitioners, who are parents, brother and sister, respectively, of the deceased, that the deceased was earning a sum of Rs.2,000/- per month besides Rs.100/- per day as *batta*, as a taxi driver, as PW.2 in his cross-examination, though, admitted that he was maintaining accounts and they disclose expenses of the car and salary of the driver, but failed to produce the accounts, and even the petitioners did not make any attempt to seek production of the said accounts, the Tribunal observing that no satisfactory evidence is adduced, resorted to the notional income at Rs.15,000/- per annum as provided in Schedule - II to Section 163-A of the Act and after deducting $\frac{1}{3}^{\text{rd}}$ (Rs.15,000/- x $\frac{1}{3}$) i.e. Rs.5,000/- therefrom towards his personal expenses, taken the remainder of Rs.10,000/- as his contribution to the family, and Tribunal taking the age of the younger parent, who is petitioner No.2 being the mother of the deceased as 50 years, applying multiplier '13' based on Schedule - II to Section 163-A of the Act, arrived at Rs.1,30,000/- towards loss of dependency. This apart, the Tribunal has also

granted Rs.15,000/- towards loss of estate as per the decision in **G. Manamma v. A.P.S.R.T.C.** (2000 (5) ALD 479) and Rs.2,000/- towards funeral expenses as per Schedule - II to Section 163-A of the Act, and, thus, granted a total sum of Rs.1,47,000/- towards compensation with interest at 9% per annum, directing to deduct Rs.50,000/- awarded to the petitioners under Section 140 of the Act in M.O.P. No.1043 of 1998 towards 'no fault liability'.

29. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record as it ought to have accepted the evidence of PWs.1 and 2 and fixed the income of the deceased at a minimum of Rs.2,500/- per month including *batta* and ought to have taken age of the mother of the deceased into consideration rather than father's age, and, thereby, sought to grant the balance amount of Rs.1,03,000/-.

30. So far as monthly earnings of the deceased are concerned, the Tribunal has taken notional income as per Schedule - II to Section 163-A of the Act in view of the reasons assigned by the Tribunal. It is not in dispute that the deceased was actually driving the car that involved in the accident. There is nothing in the cross-examination of

PWs.1 and 2 to show that the deceased was not the driver of the car that involved in the accident. Since the accident took place in the year 1998, the deceased must be drawing a sum of Rs.2,000/- per month. Therefore, fixing the income of the deceased at Rs.2,000/- per month and deducting half of the amount therefrom (Rs.50,000/- / 1/2) towards his personal expenses as he died in 'unmarried status' and the remainder of Rs.1,000/- per month towards contribution of the family, a sum of Rs.12,000/- per annum is arrived at towards contribution of the deceased to his family.

31. Admittedly, the deceased died in unmarried status. On the date of his death, he was 23 years old. The Tribunal has taken the age of the father of the deceased for selection of relevant multiplier.

The age of the father of the deceased was shown as 50 years in the cause title. Hence, the Tribunal has taken multiplier '13' as per Schedule - II to Section 163-A of the Act. Concerning selection of multiplier, in view of the decision of the Hon'ble Apex Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**^[5], age of the deceased has to be taken into consideration provided in the table formulated by the Hon'ble Apex Court in **Sarla Verma's Case** (Supra 1), according to which, the relevant multiplier for the age group between 21 and 25 years is '18'. When the

multiplier '18', is applied to the multiplicand of Rs.12,000/-, the loss of dependency works out to Rs.2,16,000/-. Apart from this, the petitioners are also entitled to Rs.15,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses.

32. Thus, the petitioners are entitled to a total compensation of Rs.2,36,000/- (Rupees two lakhs thirty six thousand) as against Rs.1,47,000/- awarded by the Tribunal, and the same is accordingly granted. However, the amount of Rs.50,000/- granted to the petitioners under Section 140 of the Act in M.O.P. No.1043 of 1998 towards 'no fault liability' shall be deducted from the compensation. The petitioners are entitled to interest at 7.5% per annum, as against 9% granted by the Tribunal, on the entire compensation, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh's Case** (Supra). The compensation shall be apportioned between the petitioners as directed by the Tribunal.

C.M.A. No.1018 of 2004:

33. On issue No.2, which relates to determination of compensation, the Tribunal placing reliance on the decision of this Court in **Ambati Hymavathi and others v. N.S. Krishna Murthy and others** (1998(4) ALT 26), granted a total compensation of Rs.79,000/- under the following heads, with interest at 9% per annum directing to

deduct Rs.50,000/- granted in M.O.P. No.1042 of 1998 towards no fault liability:

“(a) Minimum compensation for
The death of the deceased.
Rs.50,000-00

(b) compensation for shock and
suffering. 5,000-00

(c) Compensation for future
Prospects 5,000-00

(d) At the rate of Rs.1,000/- per year
for sixteen years for bringing her
up, educate etc. 16,000-00

(e) Incidental expenses 3,000-00

Total:-

79,000-00
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34. It is the aforesaid order, which is under challenge in the instant appeal by the petitioner, who is father of Kum. Lekkala Suryakala, who is hereinafter referred to as ‘deceased’, contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record and the Tribunal, and somehow, overlooked the fact that the deceased was doing tailoring and embroidery work and used to earn Rs.2,000/- per month and the same ought to have considered by the Tribunal in determining income of the deceased, and, therefore, sought to grant the balance amount of

Rs.81,000/-.

35. Admittedly, the deceased studied tenth standard.

The finding recorded by the Tribunal that there is no legally acceptable evidence to prove that the deceased was doing embroidery and tailoring work, since based on appreciation of evidence, cannot be faulted with. However, in view of the latest pronouncements of the Hon'ble Supreme Court in **Puttamma and others v. K.L.**

Narayana Reddy and another^[6], since the deceased was aged 16 years at the relevant time, she has to be construed as non-earning member, the petitioner is entitled to Rs.1,50,000/- in lump sum towards compensation.

36. Thus, the petitioner is entitled to a total compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand) as against Rs.79,000/- awarded by the Tribunal, and the same is accordingly granted. However, the amount of Rs.50,000/- granted to the petitioner towards 'no fault liability' under Section 140 of the Act in M.O.P. No.1042 of 1998 shall be deducted from the compensation. The petitioner is entitled to interest at 7.5% per annum, as against 9% granted by the Tribunal, on the entire compensation, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court

in **Rajesh's Case (Supra)**.

37. Accordingly, these Civil Miscellaneous Appeals are allowed in part modifying the impugned awards 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.

38. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

A. SHANKAR NARAYANA, J

June 19, 2015.

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2004 ACJ 587

[\[3\]](#) II (2014) ACC 353 (SC) = 2014 ACJ 1430

[\[4\]](#) 2013ACJ1403 = 2013(4)ALT35

[\[5\]](#) 2012 AIR SCW 3901

[\[6\]](#) 2014 ACJ 526