HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
C.M.A.No.17 of 2004

<u>JUDGMENT:</u>

Having got dissatisfied with the award of Rs.1,56,000/- as compensation for the death of one Venkataswamy in a road accident, as against the claim of Rs.4,70,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the order dated 01.02.2003 in M.V.O.P.No.889 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal –cum- Principal District Judge, Warangal, the petitioners preferred the instant appeal seeking enhancement of compensation

Appellants Nos. 1 to 4 are the petitioners. Respondent Nos. 1 and 2 were the driver and owner of the vehicle involved in the accident respectively. Respondent No. 3 is the insurer of the accident vehicle.

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

Facts, in brief, are that, on 08.09.2000, when a person by name Sri Venkataswamy was proceeding on a Hero Honda motorcycle as a pillion rider, along with one Sudershan Reddy, in the outskirts of Yelukurthy village, a lorry bearing No.ADN 2445 driven by the first respondent in a rash and negligent manner came and dashed against the motor cycle due to which he fell down and died instantly due to injuries. The petitioners herein, being the wife, son, daughter and parents of the deceased, contending that the deceased was 30 years old and was barber and agriculturist earning Rs.3,000/- p.m., sought to grant compensation of Rs.4,70,000/- from respondent Nos. 1 to 3, who are driver, owner and insurer of the lorry.

Before the Tribunal, respondent Nos.1 and 2 remained ex parte. The third respondent opposed the claim raising various pleas contending that the compensation claimed is excessive and untenable and sought to dismiss the petition.

The Tribunal, basing on the said pleadings, framed three issues about the responsibility for the accident. During enquiry, the first petitioner, besides examining herself as PW.1, examined an eye-witness as PW.2 and marked Exs.A.1 to A.9 to substantiate the claim. On behalf of the third respondent - Insurance Company, no witnesses were examined and no documents were marked.

The Tribunal, on appraisal of evidence, held issue No.1 in favour of the petitioners. On issue No.2, taking the age of the deceased as 30 years, income at Rs.1,000/- p.m, and contribution to the family at Rs.700/- p.m, and applying multiplier ‘15’, worked out the loss of dependency at Rs.1,26,000/-. The Tribunal granted Rs.15,000/- towards non-pecuniary damages and Rs.15,000/- towards loss of consortium. Thus, the Tribunal granted a sum of Rs.1,56,000/- with interest at 9% p.a. and also gave further directions as to apportionment as well as withdrawal of their respective shares by the petitioners.

Aggrieved by the aforesaid order, the present appeal is preferred contending, in the grounds of appeal, that the Tribunal has not appreciated the evidence in proper perspective and rejected the stand of the petitioners that the deceased was earning Rs.3,000/- p.m. as barber and agriculturist. The petitioners also sought to grant higher rate of interest and stating that multiplier ‘18’ ought to have been applied as per second schedule to Section 163-A of the Act, sought to grant the balance amount.

Heard Sri A.Ravinder, learned counsel for the appellants, and Sri Somanchi Venkateswarlu, learned counsel for the third respondent – United India Insurance Company Limited.

The instant appeal, against the first and second respondents, was dismissed for default by an order of this Court dated 02.09.2011. Admittedly, the first respondent is no other than the driver of the lorry and the second respondent is the owner of the lorry. In view of the decision of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma[1], dismissal of the appeal for default against the owner of lorry is of no consequence, more particularly, in view of the fact that respondent Nos.1 and 2 remained ex parte before the Tribunal and suffered decree which is under challenge in the instant appeal.

Perused the order and oral and documentary evidence let in by the petitioners.

It is the contention of the learned counsel for the appellants that the Tribunal has granted meagre compensation without any basis and fixing the monthly earnings at Rs.1,000/- and contribution to the family at Rs.700/- p.m, though the second schedule to Section 163-A of the Act provides notional income at Rs.15,000/- for a non-earning member. It is contended that, it would be difficult for the petitioners to prove the profession and the income earned by the deceased by placing documentary evidence. It is also his contention that in view of the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation[2], multiplier '17' is applicable since the deceased was aged 30 years, and 1/4th deduction is permissible from the monthly income towards contribution and, therefore, sought to grant balance amount.

Learned counsel for the third respondent – Insurance Company would submit that no documentary evidence is forthcoming to substantiate that the deceased was an agriculturist, and even to substantiate that the deceased was a barber, and, thus, supported the order of the Tribunal.

It is true, the petitioners have not filed any documentary evidence to substantiate that the deceased was an agriculturist. In the absence of certified copies of the revenue records being filed, it is difficult to accept the stand of the petitioners that the deceased was an agriculturist. Therefore, to that extent, the finding recorded by the Tribunal cannot be faulted with. However, concerning profession of the deceased, Ex.A.3, attested copy of inquest report, dated 08.09.2000, shows that the deceased was a barber and, therefore, to the extent of the deceased being a barber, and pursuing that profession, cannot be doubted. As seen from the order of the Tribunal, the Tribunal fixed the monthly income at Rs.1,000/- which works out to around Rs.33/- per day. Even, as per second schedule to Section 163-A of the Act, for a non-earning member, the notional income at Rs.15,000/- is fixed. Even, by guess work, viewing that the deceased used to earn Rs.50 per day, it works out to Rs.1,500/- p.m. or Rs.18,000/- p.a. In view of the decision of the Hon'ble Supreme Court in Sarla Verma
(2 supra), since the dependants are 5 in number, deduction of $1/4^{th}$ amount from the annual income is permissible. When $1/4^{th}$ amount, which works out to Rs.4,500/-, is deducted, the contribution to the family would arrive at Rs.13,500/- per annum. Since the deceased was aged 30 years, which is not in dispute, the relevant multiplier is '17' as per the aforesaid decision. Therefore, the loss of dependency works out to

Rs.2,29,500/-. The petitioners are also entitled to conventional sum of Rs.50,000/- as per the decision of the Hon'ble Supreme Court in Ramilaben Chinubhai v. National Insurance Company[3]. Thus, the petitioners are totally entitled to Rs.2,79,500/- towards compensation.

Concerning rate of interest, the Tribunal has granted interest at 9% per annum on the amount of Rs.1,56,000/- granted as compensation. But, in view of the decision of the Hon'ble Apex Court in Rajesh & Others v. Rajbir Singh & Others[4], the petitioners are entitled to the interest at the rate of 7.5% per annum. Thus, the petitioners are entitled to the interest at the rate of 7.5% per annum on the total compensation of Rs.2,79,500/- from the date of petition till realization. So far as apportionment is concerned, the enhanced amount is apportioned as directed by the Tribunal

Thus, the appeal is allowed in part, enhancing the compensation from Rs.1,56,000/- granted by the Tribunal to Rs.2,79,500/-, but reducing the rate of interest from 9% per annum to 7.5% per annum on the total sum of Rs.2,79,500/- from the date of petition till realization. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 11.06.2015

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

[2] 2009 ACJ 1298

[3] 2014 ACJ 1430

[4] 2013 ACJ 1403