THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A. No.1858 of 2005

JUDGMENT:

The claimants in O.P. No.1435/2001 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge) at Nizamabad (for short, 'the Tribunal') are the appellants herein. They filed the said O.P. claiming compensation of Rs.12,00,000/- for the death of one Vemula Ganga Kishan in a motor vehicle accident.

The case of the petitioners was that on 17.06.2001 when the deceased Vemula Ganga Kishan was travelling in a van bearing registration No.AP-25/T-9460 from Nizamabad to Hyderabad, though the driver of the van was driving slowly on the left side of the road, when the van reached near the limits of Devanpalli Village at about 9.45 A.M., a lorry bearing registration No.UP-70/M-9831, driven by its driver, came in a rash and negligent manner on wrong side of the road and dashed the van. In the said accident, the said Vemula Ganga Kishan died and the other inmates of the van received multiple and grievous injuries. The deceased was aged about 28 years and was earning Rs.8,000/- to Rs.10,000/- per month by doing cloth business and agriculture.

Before the Tribunal, the owner of lorry remained *ex parte* and the Insurance Company contested the case.

The Tribunal framed the following issues:

1) Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.UP-70/M-9831 by its driver?
2) Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
3) To what relief?

PWs 1 and 2 were examined on behalf of the petitioners and

exhibits A1 to A4 were marked. The Insurance Company filed a petition in I.A. No.1932/2004 under Section 170 of the Motor Vehicles Act, 1988, and the same was allowed on 28.07.2004.

The Tribunal, on the basis of oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.UP-70/M-9831.

The petitioners are mother, wife and brothers of the deceased. With regard to compensation, though PW2 deposed that the deceased was a partner in Veena Offset Printing Press and was earning Rs.10,000/- per month, apart from earning Rs.6,000/- per month by doing cloth business and selling cloth in the sandy and was also earning Rs.3,000/- to Rs.4,000/- per month by cultivating lands, his evidence was not believed by the Tribunal in the absence of any corroborative evidence. However, the Tribunal noticed that the deceased was working in the printing press for several years and came to the conclusion that he was earning not less than Rs.150/- per day and after deducting 1/3rd towards his contribution to the family, the monthly income of deceased was assessed at Rs.3,000/-. By applying the multiplier '14.81' to the person aged 35 years, the Tribunal arrived at an amount of Rs.5,33,160/-. The Tribunal awarded an amount of Rs.15,000/- towards loss of Consortium and Rs.2,500/- towards funeral expenses. Thus, in all the Tribunal awarded an amount of Rs.5,50,660/- with interest @ 9% per annum from the date of petition till the date of realisation. Seeking enhancement of the said compensation, the present appeal is filed.

In view of the evidence adduced and the finding recorded by the Tribunal, this Court feels it just and proper that the monthly income of deceased arrived at by the Tribunal is correct. However, in view of the four dependants on the deceased, the deduction should have been made to the extent of 1/4th towards personal expenses, in view of the latest decisions of the Supreme Court. Similarly, in view

of the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], for a person aged about 35 years, the multiplier is '16'. If the said multiplier is applied, the loss of contribution to the family would come to Rs.6,48,000/- (3375 x 12 x 16). The loss of Consortium should be enhanced from Rs.15,000/- to Rs.50,000/-. Similarly, the funeral expenses also should be enhanced from Rs.2,500/- to Rs.10,000/-. The total amount of compensation that is just and proper, in the facts and circumstances of the case, is Rs.7,08,000/- (Rupees seven lacs and eight thousand only). The enhanced amount shall carry interest @ 9% per annum from the date of petition till the date of realisation.

Accordingly, this Appeal is partly allowed enhancing the compensation from Rs.5,50,660/- to Rs.7,08,000/-. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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A.RAMALINGESWARA RAO, J

14.12.2015
MVA

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[1] (2009) 6 SCC 121