HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.39 OF 2006

JUDGMENT:

The instant appeal is preferred having got dissatisfied with the amount of Rs.2,37,000/- granted towards compensation by the order dated 05.04.2004 in O.P. No.2676 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Chief Judge(F.T.C.), City Civil Court, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking enhancement of compensation under Section 173 of the Act.

2. For the sake of convenience, the parties, hereinafter referred to as arrayed before the Tribunal in the Original Petition.

3. The facts, that are relevant for disposal of the instant appeal, briefly, stated are as follows:

The petitioners herein are the legal heirs and dependants on the deceased K.Murali. While he was proceeding on his scooter on 17.10.2001 at about 10.00 p.m., along with one Narsing Rao and one Baby Jhansi via Masab Tank Fly Over, Hyderabad, a Mahindra Jeep bearing No.AP 28U 7301 came in opposite direction and dashed the scooter, due to which he sustained grievous injuries. He was shifted to Osmania General Hospital, where the doctors declared him dead. The petitioners, being wife and children besides father and brother of the deceased, claiming that the deceased was aged 35 years earning Rs.5,000/- p.m. by running public telephone booth as well as kirana shop, sought a total sum of Rs.6,00,000/- as compensation.

4. The 1st respondent-owner of the jeep remained *exparte* before the Tribunal. The 2nd respondent-insurance company opposed the claim. It has

also obtained permission from the Tribunal to raise all the defences available to the 1st respondent-owner of the vehicle by making an application in I.A.No.2003/2003, which was allowed.

5. The Tribunal, based on the above pleadings, framed three issues to fix the responsibility for the accident.

6. During enquiry before the Tribunal, the 1st petitioner besides examining herself as P.W.1, also examined one B.Srinivas, who is an eye witness to the accident as P.W.2 and one P.Jayaram Reddy, Councilor of Jeedimetla area of Quthbulahpur Municipality to speak about the income derived by the deceased on kirana shop and public telephone booth as P.W.3 and marked Exs.A1 to A6. On behalf of the respondents, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1.

7. The Tribunal, on appraisal of evidence, more particularly, the evidence of P.W.2 supported by Exs.A1 and A4, held issue No.1 in favour of the petitioners.

8 . As regards determination of compensation under issue No.2, considering the evidence of P.W.3 and Ex.A5, however, opining that the evidence of P.W.3 is not convincing to establish that the deceased was earning Rs.5,000/-p.m. as stated in Ex.A6, taken the income of the deceased at Rs.1500/-p.m. and Rs.18,000/- p.a. and deducted 1/3rd towards personal expenses and taken 2/3rd towards contribution to the family, and worked out to Rs.12,000/- p.a. Since the age of the deceased was taken as 35 years, it applied the multiplier '17' and arrived at Rs.2,04,000/-. The Tribunal has also awarded Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses, Rs.15,000/- towards loss of consortium and Rs.1,000/- towards transport charges. Thus, the Tribunal in total, awarded Rs.2,37,000/- as compensation with interest at 9% p.a. with further directions as to the apportionment and withdrawal of the amounts apportioned towards the respective shares of the petitioners holding that respondents 1 and 2 are jointly and severally liable to pay the compensation.

9. It is the aforesaid order, which is sought to be modified by urging to enhance the compensation contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and fixed the earnings of the deceased at Rs.1,500/- p.m. despite the evidence of P.W.3 and Exs.A1 and A5, which would prove that the deceased was running a public telephone booth as well as kirana shop and Exs.A5 reflects the same and, therefore, sought to grant balance amount.

10. Heard Sri Y.Ashok Raj, learned counsel for the appellants and Sri A.Ramakrishna Reddy, learned counsel for the respondent No.2.

11. Perused the order and the evidence on record.

12. Concerning the kirana shop, it is no doubt true P.W.3, Councilor of Jeedimetla area of Quthbulahpur Municipality, has asserted that the deceased was running a kirana shop and getting Rs.5,000/- p.m., but he is not a relevant witness to speak about the kirana business of the deceased. Though, in the grounds of appeal it is stated that even in the inquest report, the occupation of the deceased was mentioned as kirana business, but, surprisingly, the copy of the inquest report is not exhibited by the petitioners. Even otherwise, except the self-serving statement of P.W.3 and Ex.A6 issued by him, who was not competent to issue such certificate, no other documents are forthcoming evidencing payment to the concerned commercial tax department and, therefore, the finding recorded by the Tribunal that there is no convincing evidence on record with regard to proof of kirana business said to have been run by the deceased, cannot be faulted with. However, concerning the deceased running a public telephone booth, Ex.A5 shows that the Department of Telecommunications, Ministry of Communications has issued proceedings asking the deceased to pay a minimum guarantee of Rs.100/- p.m. by signing the relevant agreement. The same was issued by the Commercial Officer (P.Ts) for G.M., Hyderabad. It is dated 21.04.1997. The accident had occurred in 2004. There is also nothing from the side of the respondent to disbelieve Ex.A5. Though, none were examined to prove the contents of Ex.A5, the very proceedings cannot be doubted.

13. The Tribunal had taken Rs.1,500/- p.m. as income of the deceased. But, however, it appears that it is on lower side though it is based on a guess

work. Therefore, keeping in view, the age of the deceased as 35 years, since no evidence is forthcoming to dispute the age of the deceased, taking the income at Rs.2,000/- p.m. asserted by the petitioner and further in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation and Rajesh v. Rajbir Singh** , though the deceased was not a public servant working in departments, still, 50% towards future prospects can be taken into consideration, thus, taken the monthly income as
Rs.3,000/-, which accounts for 50% towards future prospects of the deceased out of Rs.2,000/- p.m. As such, yearly income works out to Rs.36,000/-. Now coming to the permissible deductions as per Sarla Verma's case (supra), since the petitioners are numbering six as dependants, $1/4^{th}$ is permissible and, therefore, it works out to Rs.9,000/- towards personal expenses of the deceased, in which case the remainder of Rs.27,000/- accounts for contribution towards the family. Since the deceased was 35 years old, the multiplier '16' is applicable as per the same decision and when applied the loss of dependency works out to Rs.4,32,000/-. The petitioners are entitled to Rs.50,000/- towards conventional sums as per the decision of the Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Company Limited**. Thus, the petitioners are entitled to Rs.4,82,000/- against Rs.2,37,000/- granted by the Tribunal. The Tribunal awarded interest at 9% p.a. which is reduced to 7.5% p.a. as per the decision of the Hon'ble Apex Court in **Rajesh's case** (supra). Thus, the petitioners are totally entitled to Rs.4,82,000/- with interest at 7.5% p.a. from the date of petition till realization. The compensation shall be apportioned among the petitioners in the same proportion in which the original compensation was directed to be apportioned and disbursed by the Tribunal.

14. Accordingly, the appeal is allowed in part by modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. No order as to costs.

15. Consequently, miscellaneous applications, if any, filed in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

March 23, 2015

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