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

**M.A.C.M.A. No. 790 of 2005**

**JUDGMENT:**

Aggrieved by the order dated 29.11.2004 in M.A.T.O.P.No.473 of 1999 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short 'the Tribunal'), the instant appeal is preferred by the petitioners since the Tribunal has not fastened liability on respondent No.2-insurance company to pay the balance compensation of Rs.80,000/-, out of Rs.1,27,000/-, determined as compensation, from which Rs.50,000/- was deposited by respondent No.2-insurance company under no fault liability at the inception of the O.P. proceedings.

**2**. The appellants herein are the petitioners, while the respondent Nos.1 and 2 herein, who are the owner-cum-driver and insurer of the lorry bearing registration No.AEK 5875 respectively, were respondents in the original petition before the Tribunal.

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

**4.** The facts, in brief, are that one Samayamanthula Seetharama Raju, husband of petitioner No.1 and father of petitioner No.2, had purchased marking-nuts and boarded lorry with five bags of marking-nuts at Palvoncha to reach his village Dammapeta by paying hire charges of Rs.300/-. Respondent No.1 being the lorry driver since driven it in a rash and negligent manner and at high speed lost control over the vehicle, due to which the lorry turned upside down at about 9.00 P.M. on 24.04.1999, and Samayamanthula Seetharama Raju died instantly. The petitioners claim that the deceased was earning Rs.3,000/- per month on marking-nuts business and also on agriculture and was 42 years old on the date of accident, and therefore, sought Rs.2,00,000/- by laying claim under Section 166 of the Motor Vehicles Act, 1988 against respondents 1 and 2.

**5.** Respondent No.1 remained *ex parte.* Respondent No.2 opposed the claim raising relevant pleas and sought to dismiss the petition.

**6.** Based on the pleadings, the Tribunal framed two issues about the responsibility for the accident. During enquiry before the Tribunal, petitioner No.1 examined herself as P.W.1 and got marked exhibits A.1 to A.6. On behalf of respondent No.2, one of its officials was examined as R.W.1 and marked exhibits B.1 to B.3, which are the certified copies of policy, trip sheet and challan.

**7.** The Tribunal, on appraisal of evidence let in by the petitioners, while discussing the factual aspect elaborately and referring to the decisional law did not agree with the stand of the petitioners that the deceased was traveling as owner of goods finding that the lorry was already loaded with red metal being carried at the time the deceased boarded it at Palvoncha, and thereby held that respondent No.2 is not liable to pay compensation in view of the violation of the policy conditions as per sub-rules (3) and (5) of Rule 277 of the Rules framed under the Act. On issue No.2, taking the age of the deceased as 48 years as per exhibit A.3–copy of P.M.E. Report and discarding the stand of the petitioners that the deceased was earning Rs.3,000/- per month, for want of any proof, fixed the income of the deceased at Rs.15,000/- per annum as per second schedule to Section 163-A of the Motor Vehicles Act and deducted 1/3$^{rd}$ there from towards personal expenses of the deceased, and by applying multiplier ‘11’ for the remaining Rs.10,000/-, arrived at Rs.1,10,000/- besides granting Rs.15,000/- towards consortium to petitioner No.1 and observing that Rs.50,000/- was already deposited by respondent No.2 towards liability, exonerated respondent No.2 from its liability to pay the balance amount of Rs.77,000/-.

**8.** The aforesaid order is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal was not right in construing annual income of the deceased at Rs.15,000/- and exonerating respondent No.2 from its liability that the deceased was traveling as owner of the goods, and sought to allow the appeal by granting enhancement of amount and also to fasten liability on respondent No.2-insurance company.

**9.** Heard Sri S.Chandra Sekhar, learned counsel for the appellants. There is no representation for respondent No.2-insurance company. Despite service of notice on respondent No.1, none appeared.

**10.** It is the submission of the learned counsel for the appellants that the deceased was traveling with five bags of marking-nuts by paying hire charges to the owner of the lorry as is evident from exhibit A.1-certified copy of F.I.R, and, therefore, the deceased ought to be considered as owner of the carrying goods in a goods vehicle, which the learned Tribunal overlooked and the decisional law is to the effect that the insurance company in such an event cannot be exonerated from its liability to pay the compensation. In support of his argument, the learned counsel placed reliance on the decisions of this Court in (1) **P.Osuramma Vs. P.Ramachandra and another** (2) **Reliance General Insurance Company Limited, Hyderabad Vs. Mohd. Saleem and another** (3) **Branch Manager, United India Insurance Company Limited, Dabagardens, Visakhapatnam Vs. Dadisetti Ramanamma and others** (4) **Jayavarapu Rajamma and others Vs. Jayavarapu Laxminarayana and others** (5) **Oriental Insurance Company Limited, Cuddapah Vs. Yarava Lakshmi Devi and others.** For the proposition that the petitioners are entitled to enhancement of compensation, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in **Rajesh and others Vs. Rajbir Singh and others.**

**11.** In the light of the grounds agitated by the appellant, the points that arise for consideration are as under:

i. Whether the petitioners are entitled for enhancement of compensation?

ii. Whether the order of the Tribunal exonerating the insurance company-respondent No.2 from its liability cannot be sustained?

**12. <u>POINT No.1</u>**: Admittedly the deceased was aged 48 years as per exhibit A.3. The relevant multiplier for age group of persons between 46 and 50 is '13' as per the decision of **Sarla Verma & others v. Delhi Transport Corporation and another** of the Hon'ble Supreme Court. When the multiplier '13' is applied, the loss of dependency works out to Rs.1,30,000/-. The petitioners are also entitled to conventional sum in view of the latest judgment of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar & others Vs. M/s. National Insurance Company & others** for a total sum of Rs.50,000/-, which decision was subsequent to the decision of the Hon'ble Supreme Court in **Rajesh's** case (6 supra). Therefore, the petitioners are totally entitled to Rs.1,80,000/- as against Rs.1,27,000/- granted by the Tribunal. Accordingly, the point is answered in favour of the petitioners.

**13.** **POINT No.2:** A perusal of exhibit A.2-certified copy of the charge sheet would reflect that the deceased boarded the said lorry which was bound from Kothagudem to Vizag with iron load at Dammapeta cross road, Paloncha to go over to Dammapeta with luggage of 5 bags of marking nuts. Thus, it is clear that the said lorry was already engaged on hire by some other owner to transport the iron rods. Thus, admittedly, the deceased was a mid-way passenger, who boarded lorry at Palvoncha, of course, with five bags of marking nuts. Therefore, he cannot be construed as owner of the goods having engaged on hire the said lorry for transporting his luggage. That has been the reason the Tribunal in para 17 while referring to the fact situation, mentioned that the deceased was not concerned with red metal being carried in the said lorry and permit of lorry not authorizing carriage of any passenger carried for hire or reward in which event carrying deceased in lorry receiving a certain sum as fare from him was contrary to the terms of the insurance policy and violation of sub-rules (3) and (5) of Rule 277 of the Rules. The decisions relied on by the learned counsel for the appellants touching the aspect of 'owner of the goods' have to be construed passed on different factual situation occurring in those cases. Therefore, the finding recorded by the Tribunal exonerating respondent No.2-insurance company from its liability to pay the compensation based on violation of the terms and conditions of the policy cannot be faulted with. Hence, confirmed the finding recorded by the Tribunal, but, however, enhancing the compensation from Rs.1,27,000/- to Rs.1,80,000/- fastening liability on respondent No.1, the said compensation by giving deduction to Rs.50,000/- already paid.

**14.** In the result, the appeal is allowed in part, and the award and decree dated 29-11-2004 passed by the Tribunal in
M.A.T.O.P. No.473 of 1999 is modified, enhancing the compensation from Rs.1,27,000/- to Rs.1,80,000/- (Rupees One lakh and eighty thousand only), with interest at the rate of 7.5% per annum from the date of petition till realization, fastening liability on respondent No.1 to pay the enhanced compensation. There shall be no order as to costs.

**15.** As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

**A. SHANKAR NARAYANA, J**

Date: **11.03.2015**

MVA

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

**M.A.C.M.A. No.790 of 2005**

**Dt. 11.03.2015**

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