HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1209 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,30,000/- granted by the Tribunal towards compensation by the order dated 11.03.2005 in M.V.O.P.No.202 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal - cum – I Additional Chief Judge, City Civil Court, Secunderabad – cum - Judge, Family Court, Secunderabad, as against the claim of Rs.3,00,000/- laid under Section 166 of Motor Vehicles Act, 1988, the petitioners preferred the instant appeal seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts in brief are that on 23.06.2003 at about 5.45 a.m., while Sreeram Kanakaraju (deceased) was returning after delivering news paper in Green Corner hotel situate on Pragnapur cross road, the driver of the car bearing No.AP 10 N 5767 had driven it in a rash and negligent manner and dashed him, due to which, he sustained grievous injuries all over the body. Immediately, he was shifted to Government Hospital, Gajwel for treatment and he succumbed to injuries while undergoing treatment. The Station House Officer, Gajwel has registered a case in Crime No.76 of 2003 against the driver of the car. The petitioners, who are the parents and younger sisters of the deceased contending that he was working as newspaper boy and also running hair cutting shop and thereby used to earn Rs.5,000/- per month and contribute entire amount to the family, sought the aforesaid amount towards compensation.

4. The first respondent, owner of the car filed counter resisting the claim. However, the first respondent claimed that since the car was insured with the second respondent and the policy was in force as on the date of accident, the second respondent alone is liable to pay compensation.

5 . Second respondent filed counter opposing the claim. Second respondent went to the extent of stating that the accident occurred only due to the negligence of the deceased but not due to the negligence of driver of the first respondent and that no valid policy was subsisting as on the date of accident and sought to dismiss the claim petition.

6. On the above pleadings, the Tribunal has framed four issues about the responsibility for the accident. During enquiry, the petitioner besides examining himself as P.W.1 examined an eyewitness to the occurrence as P.W.2 and marked Exs.A1 to A3 in order to substantiate the claim for compensation. On behalf of the second respondent, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1 on consent.

7. Heard Sri Chandra Sekhar Reddy Gopireddy, learned counsel for the appellant, Sri P.Phalguna Rao, learned counsel for the second respondent-insurance company. Despite service of notice on the first respondent, none appears for him.

8. The Tribunal taken up issues 1 and 2 together and basing on the evidence of P.W.2 eyewitness, who, soon after the accident has taken the deceased to the Government Hospital and admitted him in the hospital supported by Exs.A1 and A2, which are the certified copies of FIR and Inquest report held these two issues in favour of the petitioners and against the respondents. On issued No.3, the Tribunal taken the age of the deceased as ‘19’ years on the date of accident and working as paper boy, however, did not agree with the petitioners’ stand that he was earning Rs.5,000/- per month and the source thereof, for want of legally acceptable evidence to substantiate the

stand of the petitioners but fixed the income at Rs.1000/- per month or Rs.12,000/- per annum and deducted 1/3rd there from towards his personal expenses, and taken Rs.8,000/- towards contribution, applied multiplier ‘16’ taking the age of the younger parent and arrived at Rs.1,28,000/- towards loss of dependency. The Tribunal has also granted Rs.2,000/- towards funeral expenses. Thus, a total sum of Rs.1,30,000/- was granted fastening the joint and several responsibility on respondents to pay the said sum with interest at 9% per annum. The Tribunal has also given the said direction as to the apportionment as well as the withdrawal of the respective shares of the petitioners.

9. Dissatisfied with the above said order, which is sought to be modified, as the petitioners had not satisfied with the amount of compensation granted by the Tribunal contending in the grounds of appeal that the Tribunal abruptly granted a meagre amount of Rs.1,30,000/- as against the claim of Rs.3,00,000/-. It is also stated that the Tribunal failed to assess the income of the deceased, who was a paper boy by profession and also having a newspaper distribution agency ought to have considered the income of the deceased at Rs.3,000/- per month and Rs.36,000/- per annum and ought to have granted adequate compensation. It is also stated that fixing Rs.1,000/- per month was without any basis or scientific method. It is also stated that no amount is granted towards loss of estate as per the decision of the Apex Court in ***KERALA STATE TRANSPORT CORPORATION v. SUSHAMMA THAMAS***.

10. Learned counsel for the appellants submits that notional income Rs.3,000/- ought to be taken by the Tribunal as per the latest pronouncements. In fact, finding recorded by the Tribunal that for want of proof of income as stated by the petitioners, cannot be faulted with. The petitioners have only chosen to file Exs.A1 to A3, which are certified copy of FIR, Inquest report and Xerox copy of Policy. In case the deceased did really run a hair cutting shop, certainly there would have been some evidence as to the payment of tax to the municipal authority or to the local authorities in case it is located in the village falling under the Panchayat. In that view of the matter, the Tribunal has not agreed with the stand of the petitioners. However, fixing the income at Rs.1,000/- appears to be even against the notional income prescribed in second schedule to Section 163-A of the Motor Vehicles Act, 1988, since it is

not in dispute that the deceased was distributing paper during which process the accident had occurred. So, fixing at Rs.2,000/- per month or Rs.24,000/- per annum would be the reasonable amount, basing on guess work. It is not in dispute that the deceased died in unmarried status. Therefore, 50% there of has to be deducted towards his personal expenses. The reminder Rs.12,000/- is taken as contribution to the family. The Tribunal has taken the age of the younger parent in considering the multiplier. However, in view of the decision of the Hon'ble Apex Court in ***AMRIT BHANU SHALI AND OTHERS v. NATIONAL INSURANCE CO. LTD. AND OTHERS***, the multiplier applicable to the deceased who died in unmarried status is '18' since as per the record he was 19 years at the time of accident and hence the multiplier '18' when applied, the loss of dependency works out to Rs.2,16,000/-, the Tribunal has granted Rs.2,000/- towards funeral expenses, which is enhanced to Rs.5,000/-. The Tribunal has not granted any amount towards loss of estate. However, towards love and affection, a sum of Rs.20,000/- is granted at Rs.10,000/- each to the petitioners 1 and 2 being the parents. Thus, the petitioners are totally entitled to Rs.2,41,000/- as against Rs.1,30,000/- granted by the Tribunal. So far as the rate of interest is concerned, Tribunal has granted 9% per annum. However, in view of the decision of the Hon'ble Apex Court in ***RAJESH AND OTHERS v. RAJBIR SINGH AND OTHERS,*** the same is reduced from 9% p.a. to 7.5% p.a. on Rs.2,41,000/- from the date of petition till realisation. Concerning apportionment the direction given by the Tribunal follows.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.1,30,000/- to Rs.2,41,000/- and reducing the interest from 9% to 7.5% as stated supra. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 31, 2015.

Rns