HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>MACMA No.526 OF 2005</u>

<u>JUDGMENT</u>:

The instant appeal is preferred by the United India Insurance Company Limited, who is respondent No.2 in O.P.No.721 of 1998 on the file of the learned Chairman, Motor Accidents Claims Tribunal – cum- Additional District Judge, Nizamabad, aggrieved by the order dated 10.09.2001, whereby and whereunder, a sum of 3,20,000/- was awarded to respondent Nos.1 and 2 herein towards compensation with interest @ 12% per annum with proportionate costs and withdrawal of the amounts.

2. The appellant herein, which is insurer of the lorry bearing No.ATS 914, is respondent No.2, while respondent Nos.1 and 2 herein, who are wife and son of the deceased Gondla Bhoomaiah (who died in the accident), are claimants, and respondent No.3 is the owner of the lorry bearing No.ATS 914 in the O.P. before the Tribunal.

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

4. The facts, in brief, are that on 20.06.1998 at about 11.00 AM, while the deceased Gondla Bhoomaiah was standing by the side of the road at Jangampally Village bus stand, on the road leading from Hyderabad to Nagpur on National High Way No.7, Nizamabad District, a lorry bearing No.ATS 914 coming from Hyderabad driven at high speed and in a rash and negligent manner dashed the deceased, due to which he sustained multiple and crush injuries all over his body and died instantaneously. The concerned police registered a case in Crime No.52 of 1998 under Section 304-A, 337 and 338 IPC and observed formalities.

5. Claimant No.1 being wife and claimant No.2 being minor son of the deceased, Gondla Bhoomaiah sought Rs.3,50,000/-towards compensation under Section 166 of the Motor Vehicles Act read with Rule 455 of M.V.Rules requesting to pass an order against the owner of the lorry and its insurer-2nd respondent. Before the Tribunal, the driver and owner of the lorry remained ex-party.

6. The 2nd respondent-insurance company resisted the claim requiring the petitioners to prove the material averments mentioned in the petition. In fact, it is its specific contention that there was collision between the two vehicles and, therefore, not only the owner, but also the insurer of the vehicle also is necessary party and the

claim is therefore, bad and sought to dismiss the same.

7. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, on behalf of the claimants, the wife of the deceased, who is the 1st petitioner, was examined as PW.1, and one Narayana, who is the eye witness to the accident, was examined as PW.2 and marked Exs.A-1 to A-4 as regards their entitlement for the amount claimed.

8. The Tribunal, on assessment of the evidence let in by the petitioners, particularly, on Exs.A1 to A3, which are certified copies of FIR, Post-mortem report and inquest panchanama respectively, held issue No.1 in favour of the petitioners that the accident occurred due to rash and negligent driving of the driver of the lorry. On issue No.2, while considering the evidence of PW.2 fixed the income at Rs.80/- per day equally with the daily wage of the agricultural labourer and deducted 1/3rd towards personal expenses and arrived at Rs.19,200/- per annum towards loss of dependency. Since the age of the deceased was 35 years, the Tribunal taken multiplier ‘16’ and worked out compensation at Rs.3,07,200/- (Rs.19,200/- x16) besides granting Rs.2,800/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.5,000/- towards loss of love and affection. Thus, a total sum of Rs.3.20,000/- with interest @ 12% per annum

was granted by the Tribunal apportioning the same into two equal shares to the petitioners.

9. The aforesaid order is under challenge by the insurer-2nd respondent contending that the Tribunal was not right in allowing O.P. even in part and awarding compensation of Rs.3,20,000/- with interest @ 12% per annum. It is also stated that the multiplier is 14.81, but not 16. Therefore, the Tribunal was not right in applying the multiplier 16 and sought to reduce the compensation.

10. Heard Sri D.S.N.V.Prasad Babu, learned counsel for the

2nd respondent - Insurance Company (appellant), and Sri V.Radhiv Reddy, learned counsel for respondent No.1. The appeal against the 2nd petitioner-2nd respondent is dismissed for default vide court order dated 04.01.2012, which makes no difference in view of the fact that he would be under the guardianship of his natural mother, 1st respondent. It is recorded in the grounds of appeal that the 3rd respondent is not a necessary party. Perused the order and the material on record.

11. So far as the monthly income of the deceased is concerned, the Tribunal has taken Rs.80/- per day and rightly deducted 1/3rd there from and arrived at Rs.19,200/- per annum. So far as multiplier is concerned,

the relevant multiplier for the age group between 31 and 35 is '16' as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1] and, therefore, the Tribunal did not commit any error in adopting the relevant multiplier '16'. Therefore, the said submission has no merit. Hence, the compensation arrived at Rs.3,07,000/- by the Tribunal cannot be disturbed. So also, the funeral expenses of Rs.2,800/-, loss of consortium at Rs.5,000/- and Rs.5,000/- towards loss of love and affection do not warrant interference. So far as interest is concerned, the Tribunal granted 12% per annum without assigning any reasons. In view of the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[2] the interest is reduced from 12% to 7.5%. Thus, the award and decree are modified to that extent.

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part as indicated above. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

January, 19, 2015.
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HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

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MACMA No.526 OF 2005

DATED: 19.01.2015

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[1] (2009) 6 SCC 121

[2] **2013 ACJ 1403 = 2013(4) ALT 35**