

HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA
M.A.C.M.A. Nos.3107 AND 3108 OF 2005

COMMON JUDGMENT:

Former appeal is directed against the order and decree, dated 24-08-2005, in O.P. No.678 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Adilabad (for short 'the Tribunal'), by the petitioners, who are son, husband and daughters of deceased, K. Shyamala, seeking enhancement of compensation as they were not satisfied with the award of Rs.88,000/- granted by the Tribunal as compensation. Whereas, latter appeal is directed against the order and decree, dated 24-08-2005, in O.P.No.679 of 2002 on the file of the Tribunal by the petitioners, who are husband and daughter of deceased, M. Rajavva, seeking enhancement of compensation as they were not satisfied with award of Rs.88,000/- granted by the Tribunal as compensation.

2. Since both the claims arise out of one and the same accident, these two appeals are being disposed of by way of a common judgment.

3. The appellants in both the appeals are petitioners in both O.Ps., respectively, before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.ADD 4252, are also arrayed as respondent Nos.1 and 2, respectively.

4. For the sake of convenience, the parties are hereinafter

referred to as they were arrayed in respective O.Ps. before the Tribunal.

5. The fact-situation occurring in the instant appeals is, that on 25-04-2002, Smt. K. Shyamala, who is deceased in the former appeal, and Smt. M. Rajavva, who is deceased in the latter appeal, along with others were proceeding in an auto-rickshaw bearing registration No.AP 1T 2178 from Chincholi village to Nirmal and at about 5.30 p.m., when they reached near Vishwanathpet village, a lorry bearing registration No.ADD 4252 driven by its driver at high speed in a rash and negligent manner hit the auto-rickshaw, due to which, Stm.K. Shyamala and Smt. M. Rajavva fell down from the auto-rickshaw and the lorry ran over them causing their instantaneous deaths.

i) The Station House Officer, Nirmal (Rural) Police Station registered a case in Crime No.26 of 2002 under Section 304-A and 337 IPC against the driver of the lorry.

ii) They further stated that the deceased in the former appeal was aged 45 years, earning Rs.2,000/- per month by doing petty business. Contending that on account of her death, the petitioners lost their source of income, sought compensation of Rs.2,00,000/- from respondent Nos.1 and 2, who are owner and insurer of the lorry. Similarly, the petitioners in the latter appeal contending that they lost their source of income on account of death of the deceased, who was aged 50 years, earning Rs.2,000/- per month as a beedi roller, sought compensation of Rs.2,00,000/- from the respondents.

6. Respondent No.1, owner of the lorry, remained *ex parte*, in both the claim petitions.

7. Respondent No.2 opposed the claim in both the claim petitions.

8. The Tribunal has framed four issues about the responsibility for the accident in both the claim petitions.

9. On application filed by respondent No.2 to reserve its right to raise defences at appropriate stage was granted by the Tribunal in I.A. No.2045 of 2004.

10. During inquiry before the Tribunal, petitioner No.2 in O.P. No.678 of 2002 was examined as PW.1 and marked Exs.A-1 to A-5, whereas, petitioner No.1 in O.P. No.679 of 2002 was examined as PW.1 and marked Exs.A-1 to A-5, and an eye-witness to the occurrence was examined as PW.2 in both the claim petitions. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

11. The Tribunal on appraisal of evidence on record, both oral and documentary, including the evidence of eye-witness found issue Nos.1 and 2 in favour of the petitioners in both the claim petitions. On issue No.3, the Tribunal determined the compensation at Rs.88,000/- by taking daily wages of both the deceased at Rs.30/- and computing the same for 25 days in a month at Rs.750/- and deducting 1/3rd there-from, worked out the annual income and then applying multiplier '13' taking the age of the deceased in both the claim petitions as '45' years, granted Rs.88,000/- as compensation with interest at 7.5% per annum

thereon.

12. Dissatisfied with the amounts awarded by the Tribunal, the petitioners in both the claim petitions preferred respective appeals contending in the grounds that the Tribunal has not properly appreciated the evidence on record and the Tribunal was not right in taking the earnings of the deceased at Rs.30/- per day though, coolies were being paid Rs.100/- per day during the relevant time and, therefore, sought to grant balance amount.

13. Heard Sri S. Surender Reddy, learned counsel for the appellants – petitioners in both the appeals, and Sri A. Ramakrishna Reddy, learned Standing Counsel for respondent No.2 – Insurance Company.

14. The only point that arises for consideration in both the appeals is, whether the petitioners are entitled for enhancement of compensation?

15. Perused the order and the evidence on record in both the appeals.

M.A.C.M.A. No.3107 of 2005

16. In so far as M.A.C.M.A. No.3107 of 2005 is concerned, the main contention of the petitioners is, that the monthly earnings of the deceased was Rs.2,000/- by doing petty business, but the same has not been considered by the Tribunal while granting compensation for want of definite proof. The Tribunal has taken the daily wage of the deceased at Rs.30/- per day. The accident had taken place in the year 2002. However, keeping in view the

fact that the services rendered by the deceased as domestic help, her income can be notionally taken at Rs.1500/- per month or Rs.18,000/- per annum. When 1/3rd is deducted towards her personal expenses, her contribution works out to Rs.12,000/- per annum. The relevant multiplier for person age group between 41-45 years is '14' as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1]. Thus, the loss of dependency in terms of loss of domestic help would account for Rs.1,68,000/- [Rs.12,000 x 14]. Besides the same, loss of consortium granted by the Tribunal at Rs.10,000/- is enhanced to Rs.15,000/-. Towards funeral expenses, since the Tribunal has not granted any amount, a sum of Rs.5,000/- is granted, so also loss of estate at Rs.10,000/-. Thus, in all, the petitioners are entitled to Rs.1,98,000/-. Concerning rate of interest, the Tribunal has granted the same at 7.5% per annum and the same does not warrant any interference in view of the decision rendered by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2] and, as such, the same is confirmed.

M.A.C.M.A. No.3108 of 2005

17. In so far as M.A.C.M.A. No.3108 of 2005 is concerned, as already stated in the above, in this case also, monthly earnings of the deceased can be taken at Rs.1,500/- when kept in view the nature of avocation which she was doing then. So, the annual income works out to Rs.18,000/- and, if 1/3rd is deducted towards personal expenses of deceased, it works out to Rs.12,000/-. The age of the deceased was 50 years as on the date of accident, and

the relevant multiplier for a person in the age group between 46-50 years is '13' as per the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1). When the multiplier '13' is applied, loss of dependency works out to Rs.1,56,000/- [Rs.12,000 x 13]. Besides the same, loss of consortium granted by the Tribunal at Rs.10,000/- is enhanced to Rs.15,000/-. Towards funeral expenses, since the Tribunal has not granted any amount, a sum of Rs.5,000/- is granted, so also loss of estate at Rs.10,000/-. Thus, in all, the petitioners are entitled to Rs.1,86,000/-. Concerning rate of interest, the Tribunal granted the same at 7.5% per annum and the same does not warrant any interference in view of the decision of the Hon'ble Apex Court in **Rajesh's Case**

(Supra 2) and, as such, the same is confirmed.

18. In the result, M.A.C.M.A. No.3107 of 2005 is allowed in part, and the order and decree, dated 24-08-2005, passed by the Tribunal in O.P. No.678 of 2002, are modified enhancing the compensation to Rs.1,98,000/- (Rupees one lakh and ninety eight thousand) from Rs.88,000/- (Rupees eighty eight thousand) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. While M.A.C.M.A. No.3108 of 2005 is allowed in part, and the order and decree, dated 24-08-2005, passed by the Tribunal in O.P. No.679 of 2002, are modified enhancing the compensation to Rs.1,86,000/- (Rupees one lakh and eighty six thousand) from Rs.88,000/- (Rupees eighty eight thousand) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The respective compensation amounts shall be apportioned among the petitioners in the same proportion in which the original compensation amounts were

directed to be apportioned and disbursed by the Tribunal in both the claim petitions. No order as to costs.

19. As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

December 21, 2015.

Mgr

[\[1\]](#). (2009) 6 Supreme Court Cases 121

[\[2\]](#). 2013 ACJ 1403