HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2342 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.1,93,000/- as compensation by the order dated 17.07.2007 in O.P. No.975 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Tatikonda Balaiah, husband of appellant No.1 and father of appellant Nos.2 to 4, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 to 4 herein, who are the wife and children of the said Tatikonda Balaiah, are petitioner Nos.1 to 4, while respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing registration No.AP 26U 5139, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that the petitioners are the wife and children of the said Tatikonda Balaiah (deceased), who was

agriculturist by occupation, owning fields in Narsingi village of Chegunta Mandal in Medak District. On 30.05.2004, the deceased along with his wife, who is petitioner No.1, and another were traveling in an auto-rickshaw bearing registration No.AP 25T 8773 from Jangampalli village on National Highway No.7, at about 3-00 p.m., when they reached near Yellamma temple in the limits of Baswapur village, a lorry bearing registration No.AP 26U 5139 came in opposite direction driven in a rash and negligent manner and dashed the auto-rickshaw, due to which, the said Balaiah died instantly and others received injuries.

5. Stating that the deceased was earning Rs.20,000/- per month from agriculture and used to contribute entire earnings for the maintenance of the family, sought a compensation of Rs.3,00,000/-.

6. Respondent No.1-owner of the lorry remained *ex parte*.

7. Respondent No.2-insurer opposed the claim raising one of the pleas that the driver is a necessary party as the accident occurred on account of collision between two vehicles and non-joinder of the driver of the lorry makes the claim bad and, therefore, sought to dismiss the claim petition.

8. The Tribunal framed three issues and examined P.Ws.1 and 2, besides marking Exs.A.1 to A.11 on behalf of the petitioners

and Ex.B.1-copy of insurance policy was marked on behalf of respondent No.2.

9. The Tribunal has recorded findings on issue Nos.1 and 2 in favour of the petitioners, having found rash and negligent driving of the driver of the lorry that alone occasioned the accident. In determining compensation, the Tribunal, discarding Ex.A.7-income certificate issued by the Mandal Revenue Officer, but, however, considering the entries in pattedar passbook, showing that the deceased was owning Acs.8-00 guntas of agricultural land, which was dry land, taken the earnings of the deceased at Rs.24,000/- per annum, the age of the deceased as '55' years on the date of the accident, basing on the oral evidence of P.W.1 and the entries in Exs.A.3 and A.4, which are inquest panchanama and postmortem examination report, respectively, applying the multiplier '11', arrived the loss of dependency at Rs.2,64,000/- and deducting 1/3rd towards personal living expenses of the deceased, taken the loss of dependency at Rs.1,76,000/-. The Tribunal has also granted Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards loss of estate. Thus, a total sum of Rs.1,93,000/- was granted with interest at 7.5% per annum apportioning the same among petitioner Nos.1 to 4.

10. The aforesaid order and decree are under challenge in the instant appeal contending in the grounds that despite the deceased

cultivating an extent of Acs.8-16 guntas, the Tribunal was not right in fixing income at Rs.2,000/- per month or Rs.24,000/- per annum and, therefore, sought to enhance the compensation.

11. Heard Sri P.Giri Krishna, learned counsel for the appellants-petitioners, and Sri P. Bhanu Prakash, learned Standing Counsel for respondent No.2-insurer. Though, process was completed on respondent No.1-owner, none appears for him.

12. Learned counsel for the appellants-petitioners would contend that in view of the law laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] and **Rajesh and others v. Rajbir Singh and others**[2], the number of dependents being four, sought to deduct 1/4th towards personal living expenses of the deceased by fixing the income at higher rate as the deceased owned and possessed Acs.8-16 guntas of agricultural land and fixing Rs.24,000/- as annual income by the Tribunal without assigning any reasons is clearly an error. Learned counsel also submits that though the multiplier '11' is applied correctly as per the Schedule-II to Section 163-A of the Act, but the conventional sums awarded by the Tribunal are on lower side and, therefore, sought to grant the balance amount.

13. The Tribunal has agreed with the petitioners that the deceased was owning and possessing Acs.8-16 guntas. Even if the

---
[1] (2009) 6 SCC 121
[2] 2013 ACJ 1403

entire extent is construed as dry land, still, the annual income of Rs.24,000/- taken by the Tribunal appears to be on lower side. Therefore, it would be reasonable to arrive at that the deceased must be deriving an annual income of Rs.36,000/- since elaboration in the evidence of P.W.1 as to the nature of crops that were being raised and the amount derived from the produce besides failing to file any documents to show whether the produce was sold in any agricultural market committee is wanting. Treating the annual income of the deceased as Rs.36,000/-, when 1/4th is deducted towards personal living expenses of the deceased, contribution to the family would work out to Rs.27,000/-. The multiplier factor '11' taken by the Tribunal is in tune with the multiplier factor provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma's** case (Supra 1) for the age group of persons between 51 and 55 years and when capitalized by applying the said multiplier, the loss of dependency would work out to Rs.2,97,000/- (Rs.27,000/- x 11).

14. Concerning addition of 15% towards future prospects, the submission made by the learned Standing counsel for respondent No.2-insurer requires advertence in the light of the rulings of the Hon'ble Supreme Court. It is his submission that in **Sarla Verma's** case (Supra 1), the Hon'ble Supreme Court laid down the law that the addition should be 50% of actual salary for the age group of persons below 40 years and the addition should be only 30% for the age group of persons between 40 to 50 years and there should be no addition

where the deceased was more than 50 years. In **Reshma Kumari and others v. Madan Mohan and another**[3], a three-judge bench of the Hon'ble Supreme Court while approve addition of 50% of the actual salary for the deceased with a permanent job aged below 40 years and the addition of 30%, if the age of the deceased was 40 to 50 years, and no addition should be made where the deceased was more than 50 years. It is his submission that the decision in **Rashma Kumari's Case** (Supra 3) was rendered on 02-04-2013, ten days earlier to the decision in **Rajesh's Case** (Supra 2) rendered by a Coordinate Bench on 12.04.2013, expanding the addition of 50%, 30% to the age groups mentioned in the above, and 15% in the case where the victim was between the age group of 50 - 60 years and no addition thereafter has not referred to the ruling in **Reshma Kumari's Case** (supra 2), and in view of the said issue being referred to a larger bench by a two-judge bench of the Hon'ble Supreme Court in **Shashikala & others v. Gangalakshmamma & another**[4]**,** the petitioners are not entitled to future prospects. It is true, the ruling in **Reshma Kumari's Case** was not referred in **Rajesh's Case**, but it is a later judgment rendered by the Hon'ble Supreme Court by a Coordinate Bench. In **Rejesh's Case,** the Hon'ble Supreme Court viewed that the addition of 50% and 30% where the deceased victim was below 50 years and 40 years respectively, also applies in the case of self-employed persons or persons with fixed wages and further provided addition of 15% where

[3]. (2013) 9 SCC 65
[4]. 2015 ACJ 1239

the victim was between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. The consequences of not following the decision in **Rajesh's Case** in the present case would be firstly, the advantage of having the benefit of beneficial legislation is being deprived. Second, in case the larger bench approves the law laid down in **Rajesh's Case**, the petitioners herein would be deprived of their legitimate claim for addition of 15% towards future prospects as the petitioners may not be justified in resorting to recourse of review which appears to be impermissible under Order XLVII C.P.C.

15. Further, the decision in **Rajesh's** is rendered by a coordinate bench subsequent to the decision in **Reshma Kumari's Case**. Therefore, it is desirable to apply 15% addition towards future prospects. When 15% is reckoned, it works out to Rs.44,550/- towards future prospects. The petitioners are thus, entitled to Rs.3,41,550/- [Rs.2,97,000/- + Rs.44,550/-] towards loss of dependency and future prospects. Towards conventional heads, a total sum of Rs.50,000/- is awarded in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[5]. The petitioners are thus, entitled to a total compensation of Rs.3,91,550/- as against Rs.1,93,000/- granted by the Tribunal, which of course, exceeds the claim made by them, but, since the appeal is being preferred by the petitioners seeking

[5] LAWS (SC) -2014-4-67

enhancement, there cannot be any hindrance to grant the amount exceeding the claim made by the petitioners in view of the law declared by the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[6], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[7] and **Rajesh's Case** (Supra 2). The apportionment would be in accordance with the apportionment made by the Tribunal among the petitioners so far as the enhanced amount is concerned. The petitioners are directed to pay court fee on the amount of Rs.91,550/- within three (03) months from today.

16. So far as the rate of interest is concerned, the Tribunal has granted 7.5% per annum. The same is maintained even on the enhanced amount as the same is in tune with the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

17. Accordingly, the instant appeal is allowed and the order and decree, dated 17-07-2007, in O.P. No.975 of 2005 passed by the Tribunal are modified by enhancing the compensation to Rs.3,91,550/- from Rs.1,93,000/- awarded by the Tribunal with interest at 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

---

6. AIR 2003 SC 674
7. 2012 ACJ 191 (SC)

18. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

DATE: 25-11-2016
siva/Mgr