HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A. C.M.A. No.1686 OF 2005</u>

<u>JUDGMENT</u>:

Dissatisfied with the award of Rs.1,70,000/- as compensation as against the claim of Rs.3,60,000/- laid under Section 166 of the Motor vehicles Act 1988 (for short 'the Act') through the order and decree, dated 29-03-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge (for short 'the Tribunal'), the petitioners preferred the instant Civil Miscellaneous Appeal under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein, who are legal representatives of one S.R. Parasuraman, who died in the motor accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of the lorry bearing No.PY-01-L-517, are respondent Nos.1 and 2, respectively.

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

4. The fact situation is that on 22.04.2001 at about 7.30 p.m., while Parasuraman was proceeding to Kuppam

from his house for purchasing provisions on his bicycle, near Krishnagiri Road, the lorry bearing No.PY-01-L-517 driven in a rash and negligent manner, hit him due to which, he died instantly. A case was also registered against the lorry driver. The petitioners claiming that the deceased was sole bread earner of their family, sought a sum of Rs.3,60,000/- towards compensation.

5. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry, opposed the claim by filing counter raising various pleas.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During enquiry, on behalf of the petitioners, petitioner No.2, son of the deceased, examined himself as PW.1 and marked Exs.A-1 to A-6, and on behalf of the insurer, no oral or documentary evidence was adduced.

9. The Tribunal having recorded a finding on issue No.1, while determining compensation under issue No.2, taken the age of the deceased as fifty (50) years and the multiplier factor ‘12’, income at Rs.18,000/- per annum at the rate of Rs.1,500/- per month, contribution towards family at 2/3rd i.e., Rs.12,000/- while personal expenses

was considered at 1/3rd i.e., Rs.6,000/- (Rs.18,000/- x 1/3) and, thus, arrived at Rs.1,44,000/- (Rs.12,000/- x 12) towards loss of dependency besides Rs.15,000/- towards loss of estate, Rs.1,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, and thus, making a total sum of Rs.1,70,000/- towards compensation, apportioned the same amongst the petitioners with interest at 9% per annum.

10. Aggrieved by the same, the petitioners preferred the instant appeal contending in the grounds of appeal that the Tribunal has selected wrong multiplier and has not properly appreciated the evidence on record and that the Tribunal ought to have taken income of the deceased a minimum of Rs.100/- per day as he was not only a coolie but also stone-cutter and, therefore, sought to grant the balance amount.

11. Heard Sri S.S. Bhatt, learned counsel for the petitioners (appellants).

12. No representation for respondent No.2, insurer. Though, notice was served on respondent No.1, driver of the lorry, none appears for him. So far as respondent No.1, insured, is concerned, the appeal against him was dismissed for default on 05.01.2012. However, the said dismissal is of no consequence, in view of the decision of

this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**[1]**,** since respondent No.1 has already suffered decree before the Tribunal.

13. Perused the order and decree under challenge and the evidence on record.

14. As rightly observed by the Tribunal, there is no concrete material to arrive at that the deceased was a stone-cutter and had definite income as put-forth by the petitioners. Therefore, his monthly income taken by the Tribunal at Rs.1,500/- or Rs.18,000/- per annum is maintained. So far as deduction towards personal expenses is concerned, since the dependants are numbering four (4), 1/4th is permissible. Accordingly, when 1/4th is deducted from the annual earnings of the deceased i.e., Rs.18,000/- per annum, it works out to Rs.4,500/- (Rs.18,000/- x ¼) and the remainder works out to Rs.13,500/- (Rs.18,000/- - Rs.4,500/-) and when the same is calculated with the relevant multiplier factor '13', which is applicable to the age of the deceased who was fifty (50) years old at the relevant time, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2], the loss of dependency works out to Rs.1,75,500/- (Rs.13,500/- x 13). This apart, the petitioners are also entitled to 15% thereof i.e., Rs.26,325/- additionally towards future prospects in view

of the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 2) and **Rajesh v. Rajbir Singh**[3], and Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[4] and the same are accordingly granted.

15. Thus, the petitioners are entitled to a total sum of Rs.2,51,825/- (Rupees two lakhs fifty one thousand and eight hundred and twenty five only) as against Rs.1,70,000/- granted by the Tribunal and the same is accordingly granted. The rate of interest granted by the Tribunal at 9% per annum on the amount of Rs.1,70,000/- is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 3). The enhanced compensation shall be apportioned among the petitioners as directed by the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge and enhancing the compensation, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 8, 2016.

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[1] **2001 (1) ALT 495 (D.B.)**

[2] **(2009) 6 SCC 121**

[3] **2013ACJ1403 = 2013(4)ALT35**

[4]. 2014 ACJ 1430