

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3025 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.1,89,720/- granted as compensation by the order dated 16.09.2003 in O.P. No.1003 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B. Nagar (for short, 'the Tribunal') as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one M.Anand, who was husband of appellant No.1, father of appellant Nos.2 to 4 and son of appellant No.5, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of DCM van bearing registration No.AP 12T 1791, respectively, 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 in brief are that on the intervening night of 7/8.8.1999 at about 01-45 hours, the said Anand (deceased) along with his friends Raju, Devender Singh and Srinivasa Naidu were returning from Yapral in an ambassador car bearing registration No.ABR 6727 and when they reached Rasoolpura X Roads near Begumpet, a DCM van bearing registration No.AP 12T 1791, coming from Begumpet side driven in a rash and negligent manner at high speed, dashed the ambassador car, due to which, he sustained head injury and he was shifted to Gandhi Hospital, where he succumbed to injuries while undergoing treatment on 13.08.1999. The petitioners, being the wife, children and mother respectively, claiming that the deceased was earning Rs.4,000/- per month as driver and also on fruits business and contributing the same to the family, sought a sum of Rs.6,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the DCM van.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether M.Anand died in the accident occurred on 7/8-8-99 at about 0145 hours, near police lines X roads, Begumpet, Secunderabad due to rash and negligent driving of driver of D.C.M. Toyota bearing No.A.P.12T 1791?

2. Whether the crime vehicle was insured with the 2nd respondent covering the risk?

3. Whether the petitioners are entitled to any compensation? If so to what amount and against whom?

4. To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining an eyewitness as P.W.2 and the employer as P.W.3, under whom the deceased said to have been working as a driver, and marked Exs.A.1 to A.9 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence let in the petitioners, held issue No.1 in favour of the petitioners finding that the accident had occurred due to rash and negligent driving of the driver of DCM van. On issue No.2, the Tribunal has fixed the income at Rs.1,500/- per month, deducted 1/3rd therefrom towards personal expenses and arrived the contribution to the family at Rs.12,000/- per

annum, and taking the age of the deceased as 35 years basing on the age recorded in postmortem examination report marked as Ex.A.5 and applying multiplier '14.81' basing on the decision of this Court in **Bhagwandas v. Mohd. Arif**^[1], arrived the loss of dependency at Rs.1,77,720/-. Besides the same, the Tribunal also granted Rs.10,000/- towards consortium and Rs.2,000/- towards funeral expenses and, thus, granted a total sum of Rs.1,89,720/-.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager compensation and the Tribunal, somehow, observed that the deceased was drawing Rs.1,500/- per month, despite the fact that a salary certificate was filed to substantiate that the deceased was getting salary of Rs.2,000/- per month and Rs.100/- per day towards batta and no reasons were assigned in discarding the evidence of P.W.3 to the effect that he was paying Rs.2,000/- per month and the documentary evidence Ex.A.8-salary certificate. It is also stated that the Tribunal ought to have granted Rs.20,000/- towards loss of love and affection and, therefore, sought to grant balance amount.

10. Heard Sri P. Venkat Reddy, learned counsel

for the appellants-petitioners, and Sri Naresh Byrapaneni, learned Standing Counsel for respondent No.2-Insurance Company. None appears for respondent No.1-owner of the accident vehicle, despite service of notice on him.

11. Learned Standing Counsel for respondent No.2-Insurance Company fairly submits that as per G.O.Ms.No.58 dated 08.04.1991, for a private car driver, the basic was Rs.880/- with VDA at Rs.1,100/- and, thus, the salary of the deceased can be taken as Rs.1,980/- per month.

12. Perused the order and the evidence on record. Basing on the evidence of P.W.3, the petitioners claim that the monthly salary of the deceased was Rs.2,000/-. Even according to G.O.Ms.No.58 dated 08.04.1991, the salary to be paid to the deceased at Rs.1,980/- by P.W.3 and Ex.A.8 also reflects Rs.2,000/-. There is no reason to discard Ex.A.8 and, therefore, the salary drawn by the deceased at the relevant time is taken at Rs.2,000/-. Since the dependents were five in number, $\frac{1}{4}^{\text{th}}$ amount has to be deducted towards personal expenses of the deceased in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[2] and, thus, the contribution works out to Rs.18,000/- per annum. Relevant multiplier for the persons aged between 31 and 35 years would be '16' as provided in **Sarla Verma's** case

(supra 2). Therefore, when the multiplier '16' is applied, loss of dependency works out to Rs.2,88,000/- (Rs.18,000/- x 16). In view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 2) and **Rajesh and others v. Rajbir Singh and others**^[3], the petitioners are entitled to 50% of the said amount additionally towards future prospects, which works out to Rs.1,44,000/-. Thus, the petitioners are entitled to Rs.4,32,000/- towards loss of dependency. Besides the same, towards conventional sum, Rs.50,000/- is granted to the petitioners in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**^[4].

13. Thus, the petitioners are entitled to a total sum of Rs.4,82,000/- (Rupees four lakh and eighty two thousand) as against Rs.1,89,720/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and interest at 7.5% per annum is granted on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 3).

14. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by

enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

3rd February, 2016

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[\[1\]](#) AIR 1988 AP 99

[\[2\]](#) (2009) 6 SCC 121

[\[3\]](#) 2013 ACJ 1403

[\[4\]](#) LAWS (SC) -2014-4-67