HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1662 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants – petitioners, who are the wife, children and parents of the deceased – Battu Sataiah, aggrieved by the order and decree dated 09.04.2008, passed in O.P.No.1501 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad District (for brevity "the Tribunal"), awarding a sum of Rs.3,94,000/- towards compensation, as against the claim of Rs.5,00,000/- made under Sections 166(1)(c) and 163(A) of the Act, r/w. Rule 455 of A.P. Motor Vehicle Rules, 1989, for the death of the deceased – Battu Sataiah in a motor accident that occurred on 15.08.2004, at about 8-00 p.m., near Brahmangari Temple, on National Highway No.7 road, Nirmal, seeking enhancement of compensation with interest @ 24% per annum.

2. The appellants are petitioners, respondent No.1 – owner of the offending Auto bearing No.AP 25U 6281 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.No.1501 of 2004. For the

sake of convenience, the parties are referred to as they are arrayed in O.P.No.1501 of 2004 before the Tribunal.

3. The facts, in brief, are that on 15.08.2004, while the deceased Battu Sataiah, who was the husband of petitioner No.1, was proceeding in the Auto bearing No.AP 25U 6281 from Kuntala towards Bheemgal side and at about 8.00 p.m., when it reached near Brahmangari Temple, on National Highway No.7 road, Nirmal, since the driver of the said auto drove it in a rash and negligent manner, lost control over it, due to which the auto dashed against a lorry and the auto went off the road and turned upside down, as a result of which the deceased – Battu Sataiah sustained grievous injuries and immediately, he was shifted to the Government Hospital, Nirmal, where he succumbed to the injuries, while undergoing treatment. The petitioners laid a claim for a compensation of Rs.5,00,000/-, stating that prior to the accident, the deceased – Battu Sataiah, who was aged about 35 years, was hale and healthy, and working as driver and doing agriculture and also business, and getting an income of Rs.15,000/- per month and contributing the entire amount for the maintenance of family.

4. Before the Tribunal, the 1st respondent – owner of the offending Auto remained exparte, and the 2nd respondent – insurer alone contested the claim by filing counter, raising usual pleas.

5. Basing on the pleadings, the Tribunal framed three issues as to the responsibility for the accident and the quantum of compensation, to which the petitioners are entitled?

6. During enquiry, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.10 were marked; and on behalf of the 2nd respondent – insurer, none were examined, except marking Exs.B.1 to B.4.

7. The Tribunal, having held issue Nos.1 and 2 in favour of the petitioners, determined the compensation by fixing the income of the deceased as Rs.3,000/- per month or Rs.36,000/- per annum, and after deducting 1/3rd therefrom towards his personal living expenses, by taking the age of the deceased as 39 years, applied multiplier '16' and arrived at a sum of Rs.3,84,000/- towards loss of dependency, besides granting a sum of Rs.2,500/- towards funeral expenses, Rs.2,500/- towards loss of estate, and since the 1st petitioner is the wife of the deceased, a sum of Rs.5,000/- was awarded towards loss of consortium. Thus, a total compensation of Rs.3,94,000/- with interest @ 7.5% per annum was awarded by the Tribunal.

8. It is the aforesaid order, which is under challenge in the present Civil Miscellaneous Appeal by the petitioners, on the ground that the compensation granted by the Tribunal is very

meager and that the Tribunal ought to have granted compensation of Rs.10,00,000/- by applying the multiplier factor '25', with interest @ 24% per annum and hence, sought to allow the appeal by granting the balance amount.

9. Heard Sri M. Raja Malla Reddy, learned counsel for the appellants – petitioners. Though, respondent Nos.1 and 2 were served, none appears for them. In fact, the 2nd respondent – insurer is having a Panel Advocate, but, for the reasons best known, no appearance has been entered on its behalf.

10. Perused the order under challenge and evidence available on record.

11. As could be seen from the order under challenge, the conventional sums awarded by the Tribunal appear to be on lower side. Besides the same, the multiplier factor '16' is not applicable, since it applies for the persons in age group of 36 to 40 years, for which the relevant multiplier factor applicable is '15'. Since the dependents are numbering 5, even the deduction of 1/3rd towards personal living expenses is impermissible, in view of the law declared by the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1]. Therefore, 1/4th deduction is permissible towards personal living expenses of the deceased and when 1/4th deduction is made, out of the income of

[1] (2009) 6 Supreme Court Cases 121

Rs.36,000/- per annum, the contribution to the family worksout to Rs.27,000/- and when the same is multiplied by the relevant multiplier factor '15, the loss of dependency comes to Rs.4,05,000/-. Towards future prospects also, in view of the judgment of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1) and **Rajesh and others v. Rajbir Singh and others**[2], 50% of loss of dependency has to be additionally granted, which worksout to Rs.2,02,500/-. Besides the same, the petitioners are also entitled to the conventional sum of Rs.50,000/-, basing on the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3]. Thus, the petitioners are entitled to a total compensation of Rs.6,57,500/- (Rs.4,05,000/- + Rs.2,02,500/- + Rs.50,000/- = Rs.6,57,500/-). The Tribunal has granted interest @ 7.5% per annum. The same is maintained on the enhanced amount of compensation also.

12. Turning to the question, whether the compensation exceeding the claim can be awarded, it is well settled that the Courts are empowered to grant compensation exceeding the amount claimed, while determining just and reasonable compensation, to which the claimants are entitled. In the instant case, the petitioners laid the claim for Rs.5,00,000/- only, however, they cannot be deprived of Rs.6,57,500/-,

[2] 2013 ACJ 1403
[3] LAWS (SC) -2014-4-67

though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's** case (supra 2), wherein it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

13. In the result, the Civil Miscellaneous Appeal is allowed, and the order and decree dated 09.04.2008, passed in O.P.No.1501 of 2004 are modified, enhancing the compensation from Rs.3,94,000/- to Rs.6,57,500/- (Rupees six lakhs fifty seven thousand five hundred only), while maintaining interest @ 7.5% per annum on the enhanced amount of Rs.2,63,500/- (Rupees two lakhs sixty three thousand five hundred only) also, from the date of petition till realization. However, the petitioners are directed to pay the deficit court fee on the enhanced amount within a period of three months from today. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

01.09.2016.
Msr

[4] **AIR 2003 SC 674**
[5] **2012 ACJ 191 (SC)**

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