HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2324 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioners having got dissatisfied with the award of Rs.2,05,000/- towards compensation as against the claim of Rs.11,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 27-06-2003, in O.P. No.1656 of 2000, on the file of the Chairman, Motor Accident Claims Tribunal - cum - II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), seeking enhancement.

2. The appellants herein are the petitioners in O.P. before the Tribunal, while respondent Nos.1 and 2, who are Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Musheerabad, Hyderabad and its Depot Manager, Cantonment Depot, Secunderabad, respectively, are arrayed as such.

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

4. The facts would show that one Stephen Selva

Kumar, the deceased herein, on 26-07-2000 at about 3.10 p.m., was proceeding on L.M.L. Vespa Scooter bearing registration No.AP 9H 7078 as pillion rider and while crossing Bahadurpura Police Station, an RTC bus bearing registration No. AP 10Z 6852 driven by its driver in a rash and negligent manner came and hit the scooter, due to which, he fell down and received head injury. Immediately, he was shifted to Osmania General Hospital, Hyderabad, where he succumbed to injuries on 29-07-2000 at 4.00 p.m.

i) The Station House Officer, Bahadurpura Police Station, Hyderabad, registered a case against the driver of RTC bus in Crime No.97 of 2000 under Section 337 IPC and, thereafter, altered to Section 304-A IPC.

ii) The petitioners being wife, children and father as dependants claiming that the deceased was earning Rs.1,02,500/- per annum on business and also agriculture as he had been doing sweets business at Kishanbagh under the name and style 'M/s. Anand Cottage Industries', sought a sum of Rs.11,00,000/- as compensation against the respondents.

5. Respondent Nos.1 and 2 filed their counter opposing the claim raising various grounds. The 2nd respondent, claiming that the amount sought was highly

excessive and speculative, requested to dismiss the claim petition.

6. On the basis of the said pleadings, the Tribunal has framed three issues.

7. During inquiry before the Tribunal, on behalf of the petitioners, petitioner No.1 examined herself as PW.1, and they also examined one T. Satish as PW.1, an eye-witness to the occurrence and exhibited Exs.A-1 to A-7 to substantiate their claim. On behalf of the respondents, RWs.1 and 2, who were Conductor and Driver of the bus, respectively, were examined, and no documents were filed.

8. The Tribunal on assessing the evidence of RWs.1 and 2 and PW.2 and also basing on Exs.A-4 to A-7, recorded a finding in favour of the petitioners on issue No.1, holding that due to rash and negligent driving of RW.2, the accident had occurred. On issue No.2, taking the age of the deceased as 45 years, but, however, excluding the income tax returns submitted by the petitioners on the ground that the forms did not contain the signatures of the competent Income Tax Officer to confirm the fact that the deceased was the Income Tax Assesse and that only in one of the forms the signature was found in the relevant column, and treating the deceased as a

casual labour, fixed the income at Rs.12,000/- per annum after deducting the amount towards personal expenses. Applying multiplier '15', the Tribunal arrived the loss of dependency at Rs.1,80,000/- [Rs.12,000/- x 15]. The Tribunal has also granted Rs.15,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards medical bills and, thus, granted a total sum of Rs.2,05,000/- with interest at 9% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners contending in the grounds that the Tribunal has not properly appreciated the income tax returns filed by them despite the fact that PW.1 has spoken about them and proved in accordance with evidentiary rule, and that the Tribunal also went wrong by ignoring the fact that the tax return forms have been stamped by the Income Tax Department acknowledging receipt of income tax returns and granted a meager amount and, therefore, sought to grant balance amount.

10. Heard Sri Y. Ashok Raj, learned counsel for the appellants, and Sri N. Vasudeva Reddy, learned standing counsel for respondents.

11. The learned counsel for the petitioners would submit that the Income Tax Returns for the years 1997-98

to 2000-01 were, in fact, submitted to the Income Tax Department, and on receipt of the same, the Income Tax Department affixed its seal on copies of respective years, and the observation of the Tribunal that there were no signatures of the officials of the Income Tax Department is improper and affixing seal of the department gives rise to authenticity to Ex.A-1 and, therefore, sought to treat the amounts mentioned therein as the income of the deceased. Whereas, learned standing counsel for the respondents would submit that the Tribunal has not committed any mistake in recording the said observation since they do not contain signatures of the officials of Income Tax Department and, thus, rightly discarded Ex.A-1 and, thus, supported the order and decree passed by the Tribunal.

12. Perused the order and the evidence, both, oral and documentary, let in by the parties.

13. A perusal of Ex.A-1, copies of income tax returns, would clearly show that they bear seal of the Income Tax Department and, in fact, the Tribunal itself observed that in all the tax return forms, signature was seen against column intended for signature. But, when the Tribunal is turning down the documentary evidence, it was obligated with the duty to examine oral evidence on record and derive probabilities. Without recording a

definite finding that they were got up for the purpose of claiming enhanced compensation and without assigning any cogent reasons for discarding Ex.A-1, copies of tax returns, that finding recorded by the Tribunal is improper and, therefore, the same is set aside.

14. When the amounts mentioned in the income tax returns - Ex.A-1, are perused, they do reflect that the deceased had shown Rs.41,000/- towards income on business and Rs.40,000/- on agriculture for the assessment year 1997-98. Like-wise, for 1998-99, the amounts are shown as Rs.42,000/- and Rs.45,000/- respectively; for 1999-00, Rs.50,800/- and Rs.50,000/- were shown; for Rs.2000-01 Rs.52,500/- and Rs.50,000/-, respectively. When aggregate is taken so far as income on business is concerned, it works out to Rs.1,86,300/- for four (04) financial years and per annum it works out to Rs.46,575/-. If 1/4th is deducted towards personal and living expenses of the deceased as the number of dependants are six, it works out to Rs.34,931/-. Agriculture income of the deceased shown in the income tax returns is not taken into consideration for the reason that the lands are still remaining with the petitioners. May be, towards supervisory capacity, instead of the deceased, petitioner No.1 has to look after, however, income derived on business is taken into consideration.

The deceased was 45 years old on the date of accident. In which case, multiplier factor '14' is applicable as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1]. When the multiplier '14' is applied, loss of dependency works out to Rs.4,89,034/-. The petitioners are also entitled to future prospects at 30% by way of addition as per the aforesaid decision and the decision in **Rajesh and others v. Rajbir Singh and others**[2], and the same works out to Rs.1,46,710/-, and when the same is added, the total loss of dependency works out to Rs.6,35,744/-. The petitioners are also entitled to Rs.50,000/- towards conventional sum as against the amounts of Rs.15,000/- towards loss of consortium, Rs.5,000/- towards funeral expenses granted by the Tribunal. So far as Rs.5,000/- awarded towards medicines is concerned, the same is confirmed, since the deceased died three days after the accident while undergoing treatment. Thus, in all, the petitioners are entitled to Rs.6,90,744/- as compensation as against the amount of Rs.2,05,000/- granted by the Tribunal.

15. Concerning rate of interest, the Tribunal granted it at 9% per annum, the same is not disturbed. But, on the enhanced amount, rate of interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme

Court in **Rajesh's Case** (Supra 2)**.**

16. In the result, the appeal is allowed in part, and the order and decree, dated 27-06-2003, in O.P. No.1656 of 2000, passed by the Tribunal are modified enhancing the compensation to Rs.6,90,744/- (Rupees six lakhs ninety thousand seven hundred and forty four) from Rs.2,05,000/- with interest at 9% per annum on the amount of Rs.2,05,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.4,85,744/- (Rupees four lakhs eighty five thousand seven hundred and forty four) from the date of petition till realization. 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

April 01, 2016.
Mgr

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[1]. **(2009) 6 Supreme Court Cases 121**
[2]. 2013 ACJ 1403