THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A.No.2320 of 2006

JUDGMENT:

This appeal is arising out of the order, dated 25.07.2006, passed in O.P.No.3075 of 2004 on the file of X Additional Chief Judge (Fast Track Court) City Civil Court, Hyderabad (for short 'the Tribunal).

2. The appellants are the legal heirs of Ch.Srinivasa Rao (hereinafter referred to as 'the deceased'), who died in a motor vehicle accident that occurred on the intervening night of 1/2.11.2004. They filed the above referred O.P. under Section 163A of the Motor Vehicles Act, 1988 (for short 'the Act'), claiming compensation of Rs.5,00,000/- on account of the death of the deceased.

3. The brief facts of the case are that on the intervening night of 1/2.11.2004, an accident occurred near CCMB, Habsiguda, involving an auto rickshaw and Eicher Mini Truck. In the said accident, the Truck turned turtle and the auto rickshaw was trapped under it, resulting in death of one person in the auto rickshaw. Thereafter, at about 1.10 a.m. on 02.11.2004, a lorry bearing No. KA 39 1782 was coming from Tarnaka, driven by its driver in a rash and negligent manner, ignoring the signals of the police and ploughed into the crowd of people, as a result of which, the deceased crushed under the wheels of the said lorry and died on the spot. At the time of

accident, the deceased was aged about 28 years, working as auto driver and earning Rs.3,000/- per month. The legal heirs of the deceased, the wife and the parents, claimed compensation of Rs.5,00,000/- on account of the death of the deceased.

4. Respondent No.1, owner of the lorry, remained *ex parte*. Respondent No.2-Insurance Company filed counter denying the allegations made in the petition.

5. The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.2,02,000/- as against the claim of Rs.5,00,000/-. Dissatisfied with the quantum of compensation, the appellants filed this appeal for enhancement of the same.

6. Heard Mr. V. Atchuta Ram, learned counsel for the appellants, and Mr. S. Agastya Sarma, learned Standing Counsel for the second respondent – Insurance Company.

7. The point for consideration in this appeal is as to whether the appellants are entitled to enhancement of compensation?

8. Learned counsel for the appellants submits that the Tribunal has not taken correct income of the deceased while assessing the compensation. He further submits that the deceased was an auto driver and earning Rs.3,000/- per month and the Tribunal has taken his income at Rs.1,250/- per month as per Schedule II to Section

163A of the Act. He also submits that the calculation of income basing on Schedule II is not correct in view of the decision rendered by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1].

9. In the impugned order, the Tribunal has taken notional income of the deceased as per Schedule II to Section 163A of the Act. As per the ratio laid down by the Apex Court in **Ramesh Singh v. Satbir Singh**[2], **New India Assurance Company Ltd. v. Smt. Shanti Pathak**[3], **Oriental Insurance Co. Ltd. v. Syed Ibrahim**[4], **New India Assurance Co. Ltd., v. Kalpana (Smt)**[5], the decision of High Court of Karnataka at Bangalore in **Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager**[6] and the decision of High Court of Calcutta in **United India Insurance Co. Ltd. v. Shri Buro Mahara**[7], the income of the deceased can be taken into consideration as Rs.3,000/- per month. In view of the same, the Tribunal ought to have considered the evidence of P.Ws.1 and 2 that the deceased was earning Rs.3,000/- per month by running an auto.

10. In the instant case, the deceased was working as an auto driver. As such, there is a possibility of the deceased earning even more income than Rs.3,000/- per month as claimed by the

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[1] (2009) 6 SCC 121
[2] MANU/SC/7089/2008
[3] MANU/SC/7776/2007
[4] MANU/SC/7915/2007
[5] (2007) 3 SCC 538
[6] MANU/KA/3721/2013
[7] MANU/WB/0139/2015

appellants. However, the notional income of the deceased is taken as Rs.3,000/- per month for the purpose of calculation of compensation. Therefore, the annual income of the deceased comes to Rs.36,000/- (Rs.3000X 12). After deducting one-third towards the personal expenses of the deceased, his annual contribution to the family would be at Rs.24,000/-. The age of the deceased at the time of accident was 28 years. After applying the multiplier '18', which is applicable to the age group of the deceased, the loss of dependency can be assessed at Rs.4,32,000/- (24,000X 18).

11. Learned counsel for the appellant also submitted that the Tribunal has awarded meagre amounts towards funeral expenses of the deceased at Rs.2,000/-, consortium at Rs.5,000/- and loss of estate at Rs.15,000/- and sought enhancement of the same.

12. As a matter of fact, the Tribunal has reasonably assessed the amount of compensation on the above heads.

13. Having regard to the facts and circumstances of the case, the compensation awarded by the Tribunal is enhanced from Rs.2,02,000/- to Rs.4,54,000/- (Rs.4,32,000/-+2,000+5,000+15,000).

14. Accordingly, the appeal is allowed in part modifying the compensation awarded by the Tribunal from Rs.2,02,000/- to 4,54,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till realisation. Respondent No.2

is directed to deposit the amount within two months from the date of receipt of a copy of this order, excluding the amount, if any, deposited earlier. There shall be no order as to costs.

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

G. SHYAM PRASAD, J

Date: 26.12.2016
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