HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.466 OF 2009

JUDGMENT:

The instant appeal is preferred by respondent No.2 - M/s. New India Assurance Company Limited in O.P. No.944 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Nizamabad (for short 'the Tribunal'), aggrieved by the order and decree, dated 14-08-2002, in the said OP, whereby and where-under a sum of Rs.6,68,000/- was granted as compensation as against the claim of Rs.8,00,000/- laid under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 for the death of ancestor of petitioners, who are respondent Nos.1 to 9 herein, mainly on the ground that the amount granted by the Tribunal was excessive.

2. Respondent No.10 and appellant herein, who are owner and insurer of lorry bearing registration No.AP 25T 4815, respectively, are respondent Nos.1 and 2, while respondent Nos.1 to 9 are the petitioners in O.P. before the Tribunal.

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

the Tribunal.

4. The facts would show that one Mohd. Ibrahim was working as driver in Andhra Pradesh State Road Transport Corporation (APSRTC), Banswada Depot. On 14-06-1997, he was riding his bicycle having started from LIC Cross-roads, Yellammagutta proceeding towards Phulong side at about 2.00 a.m., and when he reached in front of Andhra Bank, Hyderabad road, Nizamabad, a lorry bearing registration No.AP 25T 4815 came from behind and dashed him as it was driven in a rash and negligent manner by its driver resulting in injuries and his instant death.

5. Two-sets of claimants laid claim petitions seeking compensation. O.P. No.593 of 1997 was filed by the mother and sisters of the deceased - Mohd. Ibrahim seeking a sum of Rs.2,00,000/- as compensation. Whereas, mother, wife and children of the deceased filed O.P. No.944 of 1997 seeking a sum of Rs.8,00,000/- as compensation. Both these claim petitions were laid under Section 166 of the Act. That appears to be the reason, the Tribunal has taken up joint trial and passed common order fixing the entire compensation at Rs.7,68,000/- apportioning the same amongst petitioner Nos.2 and 3 in the former petition and petitioner Nos.2 to 9 in the latter petition.

6. In both the petitions, respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer opposed the claim by raising various pleas.

8. The Tribunal framed three identical issues, and during inquiry, PWs.1 to 4 were examined and Exs.A-1 to A-8 were marked on behalf of the petitioners in both the petitions. On behalf of respondent No.2, no witnesses were examined and no documents were marked.

9. The Tribunal basing on the particulars in the salary certificate - Ex.A-6, having found Rs.4,700-60ps. as monthly salary, fixed the income at Rs.6,000/- per month keeping in view, the future prospects also in view of the remaining service and the age of the deceased was 45 years. Applying multiplier '15' having deducted 1/3rd towards his personal expenses, arrived the loss of dependency at Rs.7,20,000/-. This apart, the Tribunal has granted a sum of Rs.30,000/- towards loss of consortium; Rs.10,000/- towards loss of love and affection and Rs.8,000/- towards funeral expenses, thus,
a total sum of Rs.7,68,000/- was granted with interest at 9% per annum thereon. The said amount was apportioned as under:

" <u>O.P.593/97</u>

Petitioner No.2.	Rs.50,000/-
Petitioner No.3.	Rs.50,000/-

O.P.No.944/97.

Petitioner No.2.	Rs.3,00,000/-
Petitioner No.3.	Rs. 44,000/-
Petitioners No.4 to 9.	Rs. 54,000/- Each."

The Tribunal has also given certain directions as to withdrawal of the amounts.

10. Aggrieved over the aforesaid order, the insurer preferred the appeal in MACMA No.217 of 2005 challenging the decree in O.P. No.593 of 1997, and the present appeal challenging the decree in O.P. No.944 of 1997.

11. The attack in the appeal has been that the Tribunal ought to have applied multiplier '10.45' but not '15' and the salary ought not to have taken at Rs.6,000/- and ought to have taken at Rs.4,700.60ps. in view of the particulars mentioned in Ex.A-6 and, therefore, the order passed by the Tribunal is wholly erroneous and required to be set-right.

12. There has been no representation on behalf of the appellant - insurer. Heard Sri V. Tulasi Reddy, learned counsel for respondent Nos.2 to 9 - petitioners; the appeal against respondent No.10 was dismissed for default by order, dated 15-12-2008. However, it would make no difference in deciding the controversy herein, as he was

ex parte before the Tribunal.

13. At the outset, it is to be mentioned that the appeal preferred by the Insurance Company in MACMA No.217 of 2005 against the decree in O.P. No.593 of 1997 was disposed of by this Court by judgment, dated 21-10-2010, dismissing the appeal and confirming in all respects. The award of compensation challenged by the insurer therein was the very same amount of compensation granted while discussing the claims in both the original petitions, since they relate to one and the same accident and for the death of the deceased. In fact, it has to be construed that this Court has well considered the amount of compensation determined by the Tribunal as it was only the apportionment that was done so far as the petitioners are concerned in both the appeals.

14. However, when examined the determination of compensation, it is true that the Tribunal, no doubt, mentioned in paragraph No.15 of the order under challenge that Ex.A-6 would show that the deceased was getting salary of Rs.4,700-60ps. per month, but the Tribunal fixed the earnings at Rs.6,000/- per month by assigning plausible reason that future prospects were also taken into consideration in fixing the said amount. The Tribunal, in fact, has deducted 1/3rd, but in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v.**

Delhi Transport Corporation[1], certainly, 1/5th has to be deducted as the dependants are more than six in number. The Tribunal appears to have taken the multiplier '15' from the II Schedule appended to Section 163-A of the Act, and, in fact, the relevant multiplier would be '14' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1). Even otherwise, if the law laid down by the Hon'ble Supreme Court in the aforesaid decision and in **Rajesh and others v. Rajbir Singh and others**[2] is applied, it cannot be said that the amount of Rs.7,68,000/- arrived at by the Tribunal and apportioned to the petitioners is excessive or arbitrary. Therefore, the order and decree under challenge do not suffer from any legal infirmity. There is no merit in the appeal.

15. Accordingly, the appeal is dismissed. 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 18, 2016.
Mgr

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[1]. (2009) 6 Supreme Court Cases 121

[2]. 2013 ACJ 1403