THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1746 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.1,86,000/- as compensation with interest at 7.5% per annum, by order and decree, dated 24.12.2008, in M.V.O.P.No.1214 of 2007 on the file of Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Guntur, as against the claim of Rs.3,00,000/- laid under Section 163A of the Motor Vehicles Act, 1988 (for short, 'the Act'), the present appeal is preferred by the petitioners in the said O.P., seeking enhancement of compensation.

2. The appellants are the petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer of the oil tanker that involved in the accident, respectively, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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 on 03.01.2007 at about 08:00 PM, while one Athota Lokaiah was returning to his Village from Tenali on his bicycle and when he reached Somasundarapalem bridge, an oil tanker bearing registration No.MH-43-E-0015, coming in opposite direction driven in a rash and negligent manner dashed him, due to which, he sustained grievous injuries. He was immediately shifted to

Government Hospital, Tenali, but he succumbed to the injuries while being shifted.

5. The petitioners, being wife and sons of the deceased, claiming that the deceased used to earn Rs.150/- per day working under Chukkapalli Siva Rama Pullaiah, sought a sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the oil tanker, respectively.

6. Respondent No.1 remained *ex parte* before the Tribunal.

7. Respondent No.2 opposed the claim raising usual defence.

8. Based on the said pleadings, the Tribunal has framed three issues. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A1 to A5 to substantiate the claim laid. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

9. The Tribunal decided all the issues in favour of the petitioners. It has taken the age of the deceased between 40 and 45 years, but so far as his income is concerned, it did not agree with the stand of the petitioners for want of legally acceptable evidence that the deceased used to earn Rs.150/- per day, and taking the notional income at Rs.15,000/- per annum, deducting 1/3rd therefrom towards the personal living expenses of the deceased, taking the remainder, Rs.10,000/- towards contribution to the family, by applying multiplier

factor '15', arrived at Rs.1,50,000/- towards loss of dependency and granted the same, besides, granting Rs.15,000/- towards loss of estate, Rs.3,000/- towards funeral expenses, Rs.3,000/- towards transportation and Rs.15,000/- towards loss of consortium, thus, making a total of Rs.1,86,000/-.

10. Feeling that the aforesaid amount granted by the Tribunal is on lower side, the present appeal is preferred by the petitioners stating that the Tribunal has not properly appreciated the evidence on record and not assigned reasons in discarding the stand taken by the petitioners that the deceased was earning Rs.150/- per day and contending that the Tribunal ought to have awarded interest at 12% per annum as against 7.5% per annum awarded by it, as the same is contrary to the judgment of the Honourable Supreme Court in **Tejender Singh Gujral v. Indrajit Singh and another**[1], sought to grant the balance amount.

11. Heard Sri B. Parameswara Rao, learned counsel for the appellants. No representation for respondent No.2 – Insurance Company. It is endorsed in the cause title of the appeal that respondent No.1 is not a necessary party. Of course, he remained *ex parte* before the Tribunal and suffered decree.

[1] 2007 ACJ 37

12. The short point that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate, and if not, to what amount the appellants are entitled.

13. The order passed by the Tribunal does not show as to why the Tribunal resorted to fixing the notional income as the earnings of the deceased, though, the petitioners have, atleast, stated that the deceased was working under Chukkapalli Siva Rama Pullaiah earning Rs.150/- as daily wage. It is no doubt true, the occupation of the deceased was not clearly indicated by the petitioners and even in the inquest report, marked as Ex.A3, nothing is mentioned against column No.3 as to the occupation of the deceased, but, keeping in view, the decisions rendered by the Honourable Supreme Court, more particularly when the deceased was an earning member, but not an unearning member, it would be reasonable to fix the monthly earnings of the deceased at Rs.2,000/- per month or Rs.24,000/- per annum. When 1/3rd therefrom, amounting to Rs.8,000/-, is deducted towards his personal living expenses, the remainder Rs.16,000/- would be his annual contribution to the family. Though, there is no proof of age of the deceased, since the Tribunal recorded that the deceased would be aged between 40 and 45 years and taken multiplier factor '15' basing on the second schedule to Section 163A of the Act, the said multiplier is adopted, in view of the fact that the claim is made under Section 163A of the Act and, therefore, when multiplier factor '15' is applied, the loss of dependency would work out to Rs.2,40,000/-. The

petitioners are also entitled to additional amount towards future prospects at 30% thereon, which works out to Rs.72,000/-. Thus, the petitioners are entitled to Rs.3,12,000/- towards loss of dependency, including future prospects. The petitioners are also entitled to conventional sum of Rs.50,000/- as against Rs.36,000/- granted by the Tribunal under various heads, in view of the decision of the Honourable Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[2]. Thus, the petitioners are entitled to Rs.3,62,000/- as against Rs.1,86,000/- awarded by the Tribunal.

14. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**[3], the same is maintained on the enhanced amount also.

15. Though, the compensation determined exceeds the claim made by the petitioners at Rs.3,00,000/-, still, the petitioners cannot be deprived of the amount of Rs.3,62,000/- arrived at in determining the just and adequate compensation, in view of the decisions of the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others**[4]**, Sri Laxman @ Laxman Mourya v. Divisional Manager,**

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[2] LAWS (SC) -2014-4-67
[3] (2013) 9 SCC 54
[4] AIR 2003 SC 674

Oriental Insurance Company Limited[5] and **Rajesh's case (supra 3)**. Hence, the petitioners are granted Rs.3,62,000/-.

16. The appellants - petitioners are directed to pay Court fee on Rs.62,000/- within three months from today.

17. Accordingly, the appeal is allowed enhancing the compensation from Rs.1,86,000/- to Rs.3,62,000/- with interest at 7.5% per annum. The enhanced amount shall be apportioned among the appellants – petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

18. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 07, 2016.
MD

[5] 2012 ACJ 191 (SC)