THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1730 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioners in M.V.O.P.No.710 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal – cum – Principal District Judge, East Godavari District at Rajahmundry, aggrieved by the order and decree, dated 27.03.2008, passed in the said O.P., whereby and whereunder, a sum of Rs.4,29,980/- was awarded towards compensation, as against the claim of Rs.15,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the death of their son, Gundu Chakradhara Manga Raju, in a road accident.

2. The appellants are the petitioners, while respondent Nos.1 to 3, who are the driver, owner and insurer of the lorry that involved in the accident, are respondent Nos.1 to 3, and respondent No.4, who is the insurer of the vehicle of the deceased, is respondent No.4 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 brief facts are that the son of petitioners, Gundu Chakradhara Manga Raju, aged 21 years working as Business Manager in Devee Biologicals Private Limited, Hyderabad, earning Rs.9,000/- per month, after completion of his work, while going on

his two wheeler Bajaj CT 100 bearing registration No.AP-37-AG-4937 from Godavarikhani to Pedappalli, at about 06:30 PM, a lorry bearing registration No.AP-13-T-5239 driven at high speed in a rash and negligent manner by its driver came from behind and hit his two wheeler, due to which, he fell down and received serious injuries and died instantly. The petitioners, who are the parents of the deceased, Gundu Chakradhara Manga Raju, therefore, claimed a compensation of Rs.15,00,000/- from respondent Nos.1 to 4.

5. Before the Tribunal, respondent Nos.1 and 2, driver and owner of the lorry, remained *ex parte*.

6. Respondent Nos.3 and 4 filed written statements opposing the claim.

7. The Tribunal, basing on the pleadings, framed three issues. During enquiry, petitioner No.2 examined herself as PW.1, besides examining PWs.2 and 3 and marked Exs.A1 to A8. On behalf of contesting respondents, no oral evidence was let in, but copy of the insurance policy issued by respondent No.3 – Company was marked as Ex.B1.

8. The Tribunal, on appraisal of evidence on record, recoded a finding on issue No.1 that the driver of the lorry was responsible for the death of the deceased. On issue No.2, disbelieving the evidence of PW.3, who claimed to be the Managing Director of so called Devee

Biologicals Private Limited, assigning the reason that except Ex.A7, no other documents were filed and PW.3 has categorically admitted in his cross-examination that except Ex.A7, there was no other document to show that the deceased worked in their Company and that the relevant records were held up in their Company at Hyderabad, fixed the monthly earnings of the deceased at Rs.4,000/- or Rs.48,000/- per annum, as against Rs.9,000/- per month claimed by the petitioners, and applying multiplier factor '12.89', taking into consideration the age of younger parent of the deceased, petitioner No.2, to the amount contributed by the deceased to the family, which it construed as Rs.32,000/- per annum, having deducted 1/3rd from the earnings of the deceased towards his personal living expenses, arrived at Rs.4,12,480/- towards loss of dependency or contribution of the deceased to the family. The Tribunal has also granted Rs.15,000/- towards loss of estate, Rs.500/- towards transportation of the dead body to their house and Rs.2,000/- towards funeral expenses. Thus, a total sum of Rs.4,29,980/- was granted.

9. It is the aforesaid order, which is under challenge in the instant appeal by the petitioners contending in the grounds of appeal that the Tribunal erred in taking the monthly earnings of the deceased at Rs.4,000/-, though, Ex.A7 was filed showing that the deceased was earning Rs.9,000/- per month, and that the Tribunal failed to consider the evidence of PW.3 and hence, sought to grant the balance amount.

10. Heard Sri K. Venkatesh, learned counsel for the appellants, and Sri E. Venu Gopal Reddy, learned counsel for respondent No.3. Since, in the grounds of appeal itself the appellants have got endorsed that respondent Nos.1, 2 and 4 are not necessary parties, no process was taken out.

11. Learned counsel for the appellants would submit that the Tribunal went wrong in fixing Rs.4,000/- as the monthly earnings of the deceased, though, there is cogent evidence on record through PW.3, who has justified the contents of Ex.A7. It is also his submission that the Tribunal, somehow, applied multiplier factor '12.89' basing on the age of petitioner No.2, mother of the deceased, though, it ought to have applied the multiplier factor applicable to the age of the deceased, who died at the age of 23 years, and he even sought to grant future prospects placing reliance on the decisions of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1] and **Rajesh and others v. Rajbir Singh and others**[2].

12. Per contra, learned counsel for respondent No.3 would contend that the Tribunal assigned reasons in excluding Ex.A7 and the evidence of PW.3, in view of the answers given by PW.3 in his cross-examination, and granted just and adequate compensation. However, the learned counsel would admit applying the ratio laid

[1] (2009) 6 SCC 121
[2] (2013) 9 SCC 54

down by the Honourable Apex Court in **Reshma Kumari and others v. Madan Mohan and another**[3] and **Munna Lal Jain and another v. Vipin Kumar Sharma and others**[4], with respect to deducting 50% of the annual earnings of the deceased towards his personal living expenses and applying multiplier factor '18', which is the relevant multiplier factor for the age group of persons between 21 and 25, as the deceased falls in the said group.

13. A perusal of the evidence of PW.3 would clearly indicate that he made a categorical admission that except Ex.A7, no other documents were filed to show that the deceased worked in their Company and the relevant records were held up in their Company at Hyderabad. Even concerning Ex.A8, marked through PW.1, PW.3's evidence is absolutely silent. When PW.3 was re-examined, he stated that his Firm accounts will be audited by both Sales and Income Tax Departments and his Firm is having internal auditor, but when he was further cross-examined, he gave a positive answer that he has no document to show the Assessment Order regarding the Sales Tax and Income Tax departments of his Firm accounts. In the presence of such an admission given by PW.3, it is difficult to construe what is mentioned in Ex.A7, Salary Certificate of the deceased said to have been issued by the said Company, as authentic and true. That has been the reason, the Tribunal has recorded a finding in excluding the

[3]. (2013) 9 SCC 65
[4] (2015) 6 SCC 347

evidence of PW.3, but, however, arrived at Rs.4,000/- as monthly earnings of the deceased. Since nothing is forthcoming to construe that finding recorded by the Tribunal as patently perverse, no interference at all is warranted. Therefore, taking the net income of the deceased at Rs.4,000/- per month, deducting 50% thereof towards his personal living expenses and applying multiplier factor '18', contribution of the deceased to the family works out to Rs.4,32,000/-. The amount of Rs.15,000/- granted by the Tribunal towards loss of estate is enhanced to Rs.30,000/-. The amount of Rs.500/- granted towards transportation of the dead body totally appears to be on lower side. Therefore, Rs.5,000/- is granted. The amount of Rs.2,000/- granted towards funeral expenses is enhanced to Rs.10,000/-. Thus, the petitioners/appellants are entitled to Rs.4,77,000/- as against Rs.4,29,980/- granted by the Tribunal. The Tribunal has awarded interest at the rate of 6% per annum, but the petitioners are entitled to interest at the rate of 7.5% per annum, in view of the decision of the Honourable Apex Court in **Rajesh's case (Supra 2)**. Hence, the rate of interest is enhanced from 6% per annum to 7.5% per annum.

14. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.4,29,980/- to Rs.4,77,000/- with interest at 7.5% per annum from the date of petition till realisation. The enhanced amount of Rs.47,020/- shall be apportioned among the

appellants in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

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

A. SHANKAR NARAYANA, J

November 18, 2016.
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