HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1762 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.2,51,000/- towards compensation as against the claim of Rs.3,00,000/- laid under
Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), appellants preferred this Civil Miscellaneous Appeal against the order and decree, dated 21.04.2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional Chief Judge, City Civil Court, Hyderabad, in O.P. No.1952 of 2000, seeking enhancement of compensation.

2. The appellants herein, who are wife and children, respectively, of N. Jaihind, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent No.1 and 2
viz., A.P.S.R.T.C., represented by its (1) Managing Director and also (2) Depot Manager, Barkatpura, respectively, owner of the bus bearing No.AP-9-Z-3321, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal and 'N. Jaihind', who died in the accident as

‘deceased’.

4. (a) The facts, in brief, would show that on 06-08-2000 at
6-00 p.m., while N. Jaihind, having got down from SETWIN bus at Neelakantam Kanchi Sarees Cloth Stores at Koti, was passing by the side of footpath, APSRTC bus bearing No.AP-9-Z-3321, Route No.225, Koto to Patancheruvu, driven in a rash and negligent manner, hit him, due to which he sustained injuries and succumbed to injuries in the Osmania General Hospital on 12-08-2000.

(b) The petitioners, who are legal heirs of the deceased, claimed that the deceased was earning Rs.6,000/- per month by running a barber shop under the name and style of ‘Jyothi Hair Cutting Saloon’ at Edi Bazar Road, Santhosh Nagar, Hyderabad, and, they are totally dependants on him, and, therefore, sought to grant Rs.3,00,000/- towards compensation.

5. The APSRTC (Corporation) resisted the claim of the petitioners by raising various grounds.

6. The Tribunal framed three (3) issues in order to determine compensation as well as negligence in taking place of accident.

7. Before the Tribunal, during enquiry, petitioner No.1, wife of the deceased, examined herself as PW.1

and an eyewitness to the occurrence as PW.2 and marked Exs.A-1 to A-6. On behalf of the Corporation, RW.1, who was driving the bus at the relevant time, was examined, but no documents were marked.

8. Admittedly, the Corporation has not preferred any appeal, as such, there is no need to deliberate on the finding recorded on issue No.1 by the Tribunal.

9. On issue No.2, the Tribunal, after deducting 1/3rd towards personal expenses of the deceased, taking his monthly income at Rs.1,500/- and his contribution to the family at Rs.18,000/- (Rs.1,500/- x 12) per annum, by applying multiplier ‘13’, arrived at Rs.2,34,000/- towards loss of dependency besides Rs.15,000/- towards loss of consortium to petitioner No.1 and Rs.2,000/- towards funeral expenses, and, thus, granted a total sum of Rs.2,51,000/- towards compensation to the petitioners with interest at 9% per annum by apportioning the same between the petitioners.

10. It is the aforesaid order which is under challenge in the instant appeal by the petitioners contending that the Tribunal without proper reasoning discarded income of the deceased despite there being assertions made by PW.1. Further, they claim that the Tribunal granted meagre compensation, and, therefore, sough to determine just compensation and award the same.

11. Heard Sri A. Ramakrishna Reddy, learned counsel for the petitioners, and Sri N. Vasudeva Reddy, learned Standing Counsel for the Corporation.

12. Learned counsel for the petitioners submits that since the deceased was maintaining a 'barber saloon', the assertions that he was earning Rs.6,000/- per month ought not to have disbelieved by the Tribunal. It is his submission that at least Rs.4,000/- would have taken as monthly income of the deceased as per the recent decisional laws. It is also his submission that since dependants on the deceased are six in number, deduction towards personal expenses of the deceased is permissible at 1/4th instead of 1/3rd, and 15% of the earnings ought to have been awarded towards future prospects of the deceased as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1].

13. Learned Standing Counsel for the Corporation would submit that the Tribunal has taken Rs.18,000/- per annum towards contribution of the deceased to his family after deducting 1/3rd towards his personal expenses, and, therefore, the amount granted by the Tribunal towards compensation is just and reasonable, and, thus, the petitioners are not entitled to any enhancement.

14. Perused the order under challenge and the material on record.

15. It is not in dispute that the deceased was maintaining a 'barber saloon.' He was barber by profession, which finding was also recorded by the Tribunal. Even keeping in view, that the deceased was running a saloon, he must be earning at least Rs.3,000/- per month and when 1/4th i.e. Rs.750/- (Rs.3,000/- x ¼) is deducted therefrom towards his personal expenses since the dependants are six, it works out to Rs.27,000/- (Rs.2,250/- x 12) per annum towards his contribution to his family. Since the deceased was 50 years at the relevant time as per Ex.A-5, post-mortem examination report,

relevant multiplier is '13' as per the decision in **Sarla Verma's Case** (Supra 1). When annual contribution of the deceased to his family is capitalised with multiplier '13', it comes to Rs.3,51,000/- (Rs.27,000/- x 13). Further, the petitioners are entitled to 15% towards future prospects applying the ratio in **Sarla Verma's Case** (Supra 1) and also the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2], which works out to Rs.52,650/- (Rs.3,51,000/- x 15%). Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sums in view of the decision of the Hon'ble Supreme Court in **Ramilaben**

Chinubhai Parmar and others v. National Insurance Company and others[3].

16. Thus, the petitioners are entitled to a total compensation of Rs.4,53,650/- (Rupees four lakh fifty three thousand and six hundred and fifty only) as against Rs.2,51,000/- awarded by the Tribunal, and the same is accordingly awarded, though, the same is more than the claim amount, in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh and others**[4] and **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5]. However, the petitioners are entitled to interest on the amount granted by the Tribunal at 9% per annum, but on the enhanced compensation at 7.5% per annum, from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh's Case (Supra 2)**. The petitioners are entitled to enhanced compensation in the same ratio as apportioned by the Tribunal.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned award passed by the Tribunal, by enhancing the compensation, as stated supra. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous

Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

January 6, 2016.

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[1] **(2009) 6 SCC 121**

[2] **2013ACJ1403 = 2013(4)ALT35**

[3]. **2014 ACJ 1430**

[4] **AIR 2003 SC 674**

[5] **2012 ACJ 191 (SC)**