

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2047 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants – petitioners, who are husband and children of the deceased – Shaik Bivi Sahera, being her legal representatives, aggrieved by the order and decree dated 05.12.2006, passed in O.P.No.112 of 2004, by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,14,000/- was awarded towards compensation with interest @ 7% per annum and costs, as against the claim of Rs.2,00,000/- made under Section 166 (1)(c) of the Act, for the death of the deceased – Shaik Bivi Sahera in a motor accident that occurred on 05.08.2003 at 8.30 a.m., near Hasnapur village, Adilabad District, seeking enhancement of compensation.

2. The appellants are petitioners, respondent No.1 – owner of the offending Jeep bearing No.AP 01T 5443 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.No.112 of 2004. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.112 of 2004 before the Tribunal.

3. The fact-situation, such as the manner in which the accident had occurred and the age of the deceased being

40 years and her occupation being an agricultural coolie, are not in dispute. However, the Tribunal has taken the earnings of the deceased as Rs.1,000/- per month or Rs.12,000/- per annum and after deducting 1/3rd therefrom towards personal living expenses of the deceased, applied the multiplier '13', and arrived at a sum of Rs.1,04,000/- towards loss of dependency, besides non-pecuniary compensation of Rs.10,000/- under all other heads, including loss of consortium, love and affection and, thus arrived at a total compensation of Rs.1,14,000/- with interest @ 7% per annum and apportioned the same amongst the petitioners, by order and decree dated 05.12.2006. The said order and decree are under challenge by the petitioners in the present appeal.

4. Heard Sri S. Surender Reddy, learned counsel for the appellants – petitioners, and Sri A. Veera Swamy, learned Standing Counsel for the 2nd respondent – insurer. Though, respondent No.1 – owner is served, none appears for him.

5. Perused the order under challenge and the evidence on record.

6. There is no evidence to show that the deceased was earning Rs.3,000/- per month, as claimed by the petitioners. However, on hypothetical reasoning, a sum of Rs.2,000/- per month or Rs.24,000/- per annum can be construed as earnings of the deceased. Taking into consideration petitioners Nos.2 to 5, who are the children of the deceased,

as dependents on the deceased, leaving apart petitioner No.1, who is the husband of the deceased, 1/4th deduction is permissible and, if the same is deducted, the annual contribution to the family would workout to Rs.18,000/-. Since the deceased was aged 40 years, the relevant multiplier is '15', as provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, and when the same is applied, the loss of dependency worksout to Rs.2,70,000/- (Rs.18,000/- x 15 = Rs.2,70,000/-). Besides the same, the petitioners are entitled to a sum of Rs.25,000/- towards conventional sum, as against the sum of Rs.10,000/- granted by the Tribunal towards non-pecuniary compensation, as petitioner Nos.3 to 5 are minors as on the date of accident. Thus, the petitioners are entitled to a total compensation of Rs.2,95,000/- with interest @ 7.5% per annum, as against interest granted by the Tribunal @ 7% per annum, from the date of petition till the date of realisation.

7. In the instant case, the petitioners laid the claim for Rs.2,00,000/- only, but, certainly, they cannot be deprived of Rs.2,95,000/-, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**², **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance**

¹ (2009) 6 Supreme Court Cases 121

² AIR 2003 SC 674

Company Limited³ and **Rajesh and others v. Rajbir Singh and others**⁴, wherein it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law, irrespective of the claim made. Interest @ 7.5% per annum on the total compensation is awarded in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (4 supra).

8. The petitioners are directed to pay the Court fee on Rs.95,000/- within three months from today.

9. Accordingly, this Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs.1,14,000/- to Rs.2,95,000/- (Rupees two lakhs ninety five thousand only) with interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

10. As a sequel thereto, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

30.08.2016.
Msr

³ 2012 ACJ 191 (SC)

⁴ 2013ACJ1403 = 2013(4)ALT35

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