HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.292 OF 2006

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is arising out of the order dated 05.10.2005 in O.P.No.123 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge at Nalgonda (for short "Tribunal").

2. The appellants herein are the legal heirs of deceased Chandramouli, who died in a motor vehicle accident on 20.11.2002. They filed O.P.No.123 of 2003 under Section 166 read with Section 163-A of the Motor Vehicles Act claiming compensation of Rs.4,00,000/- on account of the death of Chandramouli.

3. The brief facts of the case are that while the deceased Chandramouli was traveling as a pillion rider on the scooter bearing No.AP13A 2011 being driven by his cousin, and when they reached near Maroor bus stage, due to the rash and negligent driving of the driver of the scooter, the scooter fell down, as a result of which, Chandramouli sustained injuries all over the body. Immediately, he was shifted to Hyderabad, but on the way to Hyderabad, he died. The Police, Nakrekal registered a case in Crime No.130/2002 under Section 304-A IPC against the driver of the said scooter i.e., respondent No.1 for his rash and negligent driving. At the time of accident, the deceased was aged about 30 years and was doing cloth business and earning Rs.6,000/- per month. The legal heirs of the deceased, the wife, two daughters,

father and mother have claimed compensation of Rs.4,00,000/- on account of his death.

4. Respondent No.1, driver-cum-owner of the vehicle, has remained *ex parte* before the Tribunal. Respondent No.2 – The National Insurance Company Limited filed counter denying the averments in the petition and contended that they are not liable to pay the compensation as the deceased is not the third party to the crime vehicle and sought for dismissal of the petition.

5. The Tribunal, on consideration of the evidence of the witnesses PWs.1 to 3 and the documents Exs.A.1 to A.7 marked on behalf of the claimants and Ex.B.1 copy of policy marked on behalf of the insurance company, has awarded compensation of Rs.2,46,000/- as against the claim of Rs.4,00,000/-. Being aggrieved by the quantum of compensation, the appellants filed the present appeal for enhancement of compensation.

6. The point for consideration in this appeal is whether the appellants are entitled for enhancement of compensation?

7. Heard the arguments of learned counsel for the appellants Sri P.S.P. Suresh Kumar and learned counsel for second respondent Sri Ravi Shankar Jandhyala.

8. Learned counsel for the appellants submitted that the Tribunal has not awarded just compensation and that the income of the deceased was taken into consideration as Rs.1,500/- per month, though there was ample evidence on record to show that the deceased was earning Rs.6,000/- per month as a weaver.

9. The Tribunal has placed reliance on the evidence of P.W.1 and came to the conclusion that as the deceased did not undergo training for dying and that they have not maintained any register evidencing the maintenance of labour working under the deceased, has arrived at the conclusion that the deceased was not earning Rs.6,000/- per month. The Tribunal discarded the evidence of P.Ws.1 to 3 on the ground that P.W.1 is the interested witness and P.W.2 is the caste man of the deceased, and he was also considered as interested witness. On recording the above findings, the Tribunal has fixed the notional income of the deceased as Rs.1,500/- per month as that of the income of a labour.

10. Learned counsel for the appellants submitted that the Tribunal has deducted 1/3rd towards personal expenses of the deceased, instead of 1/4th in the light of the latest decision of Hon'ble Supreme Court in **Puttamma v. K.L.Narayana Reddy**[1]. He also submitted that the Tribunal has not awarded any amount towards future prospects.

11. Admittedly, the deceased was a weaver by profession and he was working in cloth mill and earning Rs.6,000/- per month which could not be proved by the appellants. Therefore, the notional income of the deceased which could be contributed to his family members is taken as Rs.100/- per day which comes to Rs.3,000/- per month and calculated as follows. The annual income of the deceased is Rs.36,000/- (Rs.3,000/- X 12 months), and after deducting 1/4th, it comes to Rs.27,000/- and the multiplier applicable to the age of the deceased, as per **Sarala Varma and**

[1] 2014 ACJ 526

others v Delhi Transport Corporation and another[2]**,** is '18'. The deceased being a worker was only 30 years old and he has got future prospects of getting more income in future. Considering this aspect, an amount of Rs.50,000/- is awarded towards future prospects.

12. In view of the facts and circumstances of the case, the compensation awarded by the Tribunal is enhanced as shown in the table in the tabular form given below.

Sl.No.	**Name of Head**	**Compensation Awarded by Tribunal**	**Compensation Awarded by this Court**
01.	Loss of dependency	Rs.2,16,000/-	Rs.4,86,000/-
02.	Non-pecuniary damages	Rs.15,000/-	Rs.15,000/-
03.	Future prospects	Nil	Rs.50,000/-
	TOTAL	**Rs.2,41,000/-**	**Rs.5,51,000/-**

13. The Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.2,41,000/- to Rs.5,51,000/- with proportionate costs. In view of the decision rendered in **Dharampal v. U.P. State Road Transport Corporation**[3], the rate of interest on the enhanced amount is awarded @ 7.5% per annum. The second respondent is directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw half of the decretal amount, and the remaining amount can be withdrawn after expiry of the appeal time. The enhanced amount shall be

[2] 2009(6) SCC 121
[3] MANU/SC/7680/2008

paid to the claimants on payment of deficit Court fee as the claimants paid Court fee claiming an amount of Rs.4,00,000/-.

15. In the result, the appeal is partly allowed. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.SHYAM PRASAD, J

Date: 02.12.2016
TJMR