HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1849 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners, dissatisfied with the award of Rs.3,80,000/- as compensation, by the order and decree, dated 11-09-2004, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal'), in O.P. No.627 of 2004, for the death of one Koppula Poshetty as against the claim of Rs.15,00,000/- laid under Section 166 of the Act by the wife and children of the deceased, seeking enhancement.

2. The appellants herein, who are wife and children of deceased - Koppula Poshetty, are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of Car bearing registration No.AP 09/AM-8991, are respondents as such in the OP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to hereinafter as they were arrayed in the OP.

4. The facts would show that on 16-12-2003, while K. Poshetty was proceeding along with sugarcane bullock cart from Yedpally to Deccan Sugar Factory on the left side of the road, and when it reached near Autonagar area at about 9.30 p.m., a car bearing registration

No.AP 09/AM 8991 driven by its driver at high speed in a rash and negligent manner, since lost control over it, hit him from behind and ran over him, due to which, he died instantly.

i) The petitioners claiming that the deceased was 40 years old, earning Rs.15,000/- per month by doing agriculture and cattle business and was contributing his earnings to the family, sought to grant the aforesaid sum as compensation from respondent Nos.1 and 2, owner and insurer of the car respectively.

5. Respondent No.1, owner of the car, remained *ex parte* before the Tribunal.

6. Respondent No.2 - insurer filed its written statement opposing the claim.

7. During inquiry, petitioner No.1 examined herself as PW.1, besides examining PWs.2 and 3, and Exs.A-1 to A-7 were marked, whereas, no witnesses were examined on behalf of the respondents, and only copy of insurance policy was marked as Ex.B-1.

8. The Tribunal, on issue No.1, on appraisal of evidence on record, found it in favour of the petitioners. On issue No.2, the Tribunal having taken the age of deceased as 42 years basing on Ex.A-5 - postmortem examination report, applied the multiplier '15'. The Tribunal also taken the income of the deceased at Rs.100/- per day or Rs.3,000/- per month and after deducting 1/3rd towards

personal living expenses of the deceased, arrived the annual contribution of the deceased towards his family at Rs.24,000/- and having applied the multiplier to it, arrived the loss of dependency at Rs.3,60,000/-. The Tribunal also awarded a sum of Rs.15,000/- towards loss of consortium and love and affection and Rs.5,000/- towards funeral expenses etc., making a total sum of Rs.3,80,000/- as compensation with interest at 7.5% per annum thereon from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal.

10. Virtually, there is no challenge to the findings recorded by the Tribunal in regard to the age, occupation and the earnings of the deceased fixed by the Tribunal.

11. Heard Sri Venkateshwar Varanasi, learned counsel for the appellant. Though, respondent Nos.1 and 2, were served with notices, none appears for them.

12. Perused the order and material on record, both, oral and documentary, let in by the parties.

13. It is the submission of the learned counsel for the appellant that the Tribunal was not right in fixing the monthly income at Rs.3,000/- and was not right in excluding Ex.A-7 merely on the

ground that the father's name of the deceased was wrongly noted on the pattadar pass book and, therefore, he seeks to grant balance amount.

14. So far as the finding recorded by the Tribunal on Ex.A-7 is concerned, there is complete change in the father's name of the deceased. The father's name is shown as 'Jallanna' on Ex.A-7, whereas, father's name of the deceased is shown as 'Gangaram'. No explanation appears to have been offered for the difference in the father's name on Ex.A-7. Therefore, the finding recorded by the Tribunal in not considering the contents of Ex.A-7 cannot be faulted.

15. When there is no evidence worth the name to prove the earnings of the deceased, the annual income of Rs.36,000/- taken by the Tribunal cannot also be faulted with. But, the age of the deceased was taken as 42 years basing on Ex.A-5 recital and multiplier '15' was applied, though, in fact, multiplier factor '14' is applicable in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1]. However, keeping in view, the dependants are '4' in number, the deduction should have been '1/4th', but not '1/3rd' as per the very same decision. When 1/4th is deducted towards personal living expenses of the deceased, his contribution would work out to Rs.27,000/-. When the

[1]. (2009) 6 Supreme Court Cases 121

multiplier '14' is applied, loss of dependency works out to Rs.3,78,000/- [Rs.27,000 x 14].

16. Admittedly, the Tribunal has not taken future prospects into consideration. The petitioners would have been depending on the deceased being the wife and children. Keeping in view, the law declared by the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[2], towards future prospects, 30% of the loss of dependency requires to be added which works out to Rs.1,13,400/- [30% of Rs.3,78,000/-]. Thus, the petitioners are entitled to Rs.4,91,400/- [Rs.3,78,000/- + Rs.1,13,400/-] towards loss of dependency including future prospects. Towards conventional sum, a sum of Rs.50,000/- is granted as against the amount of Rs.15,000/- towards loss of consortium so far as petitioner No.1 is concerned and love and affection so far as the petitioners are concerned and Rs.5,000/- towards transport and funeral expenses. Thus, the petitioners are entitled to Rs.5,41,400/- [Rs.4,91,400/- + Rs.50,000/-] as compensation as against Rs.3,80,000/- awarded by the Tribunal.

17. So far as the rate of interest is concerned, the Tribunal awarded 7.5% per annum and the same is maintained, even on the enhanced amount as per the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

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[2]. 2013 ACJ 1403

18. In the result, the appeal is allowed in part, and the order and decree, dated 11-09-2006, in O.P. No.627 of 2004, passed by the Tribunal are modified enhancing the compensation to Rs.5,41,400/- (Rupees five lakhs forty one thousand and four hundred) from Rs.3,80,000/- with interest at 7.5% per annum thereon from the date of petition till realization. The enhanced amount of Rs.1,61,400/- shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 12, 2016.
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