

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1453 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.1,50,000/- as compensation by the order dated 15.05.2008 in M.V.O.P. No.384 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short, 'the Tribunal') as against the claim of Rs.3,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Udhu Mallikarjuna @ Harijana Mallikarjuna in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 and 2 herein, who are parents of the said Udhu Mallikarjuna @ Harijana Mallikarjuna, are petitioner Nos.1 and 2, while respondent Nos.1 and 2 herein, who are the owner and insurer of the tipper bearing registration No.AP 11X 0163, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the said Udhu Mallikarjuna @ Harijana Mallikarjuna (deceased) died in a road accident while working as a cleaner on the tipper bearing registration No.AP 11X 0163 belonging to respondent No.1, when its driver drove it in a rash

and negligent manner and unable to control the speed, when it reached Hundri river in between Lakkasagaram and Pandhirlapalli villages and turned upside down, due to which, he sustained injuries and he was shifted to Government Hospital, Dhone, where he succumbed to injuries. The petitioners, claiming that the deceased was 23 years old but unmarried was drawing salary of Rs.3,000/- per month as Cleaner, sought a compensation of Rs.3,00,000/-.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*.

6. Respondent No.2-insurer opposed the claim raising various pleas, which, of course, are unnecessary to refer to.

7. The Tribunal, having framed relevant issues and examining P.Ws.1 and 2 and marking Exs.A.1 to A.5 on behalf of the petitioners and Ex.B.1-copy of insurance policy on behalf of respondent No.2-insurer, awarded a total sum of Rs.1,50,000/- with interest at 7.5% per annum fixing liability on both the respondents.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal was wrong in fixing Rs.1,500/- per month as the earnings, despite the fact that the deceased was working as a cleaner earning Rs.3,000/- per month and even basic minimum wage of Rs.2,645/- for cleaner has been provided in G.O.Ms.No.83, Labour, Employment, Training and Factories

(Lab.II) dated 22.11.2006, and ought to have awarded the same and, therefore, sought to grant the balance amount.

9. Heard Sri C.Prakash Reddy, learned counsel for the appellants-petitioners, and Sri T.Mahender Rao, learned Standing Counsel for respondent No.2-insurer. Though, service was completed on respondent No.1-owner, none appears for him.

10. The only point that arises for consideration is, whether the compensation granted by the Tribunal is just and adequate and whether the petitioners are entitled to enhancement of compensation?

11. Learned counsel for the appellants-petitioners mainly relying on the judgments rendered by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another¹** and **Munna Lal Jain and others v. Vipin Kumar Sharma and others²**, requests to determine the compensation. Learned Standing Counsel for respondent No.2-insurer, of course, contends that the amount granted by the Tribunal is just and adequate and no enhancement is needed.

12. In fact, the amount shown in the G.O. mentioned above at Rs.2,645/- requires to be considered as the monthly earnings and cannot be deprived and, therefore, the same is taken as the monthly earnings. Since the deceased died in 'unmarried status', when 50% of the said earnings is deducted towards his personal living expenses, his

¹ (2009) 6 SCC 121

² (2015) 6 SCC 347

contribution would work out to Rs.1,322/- per month or Rs.15,864/- (Rs.1,322/- x 12) per annum. Since the deceased was 23 years old, relevant multiplier factor applicable is '18' as per the decision of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 2) and when the same is applied, the loss of dependency works out to Rs.2,85,552/- (Rs.15,864/- x 18). The petitioners are also entitled to 50% thereof additionally towards future prospects in view of the decisions of Hon'ble Supreme Court in **Sarla Verma's** case (supra 2) and **Rajesh and others v. Rajbir Singh and others**³, which works out to Rs.1,42,776/- (Rs.2,85,552/- x 50%). Thus, the petitioners are entitled to Rs.4,28,328/- towards loss of dependency including future prospects. This apart, the amounts of Rs.20,000/- towards loss of estate and Rs.4,000/- towards transportation and funeral expenses granted by the Tribunal are maintained.

13. Petitioners laid the claim for Rs.3,00,000/- only, but, certainly, they cannot be deprived of Rs.4,52,328/-, 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**⁴, **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**⁵ and **Rajesh's** case (supra 3), 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.

³ 2013 ACJ 1403

⁴ AIR 2003 SC 674

⁵ 2012 ACJ 191 (SC)

14. Thus, the petitioners are entitled to a total sum of Rs.4,52,328/- (Rupees four lakh fifty two thousand three hundred and twenty eight) as against Rs.1,50,000/- granted by the Tribunal towards compensation and the same is accordingly granted. The enhanced compensation shall be apportioned among the petitioners as directed by the Tribunal. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of four months from today.

15. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the enhanced compensation also in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 3).

16. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

4th August, 2016

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