HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1371 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.6,15,424/- as compensation by the order dated 22.12.2006 in M.V.O.P. No.257 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.12,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Nelakuditi Sivaiah, husband of appellant No.1, father of appellant Nos.2 and 3 and son of appellant No.4, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 to 4 herein, who are the wife, children and mother of the said Nelakuditi Sivaiah, are petitioner Nos.1 to 4, while respondent Nos.1 and 2, who are the owner and insurer of the lorry bearing registration No.AP 16V 1724, 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. Certain facts relevant for the purpose of disposal of the present appeal are that the petitioners are the wife, daughter, son and

mother of the said Nelakuditi Sivaiah (deceased). On 02.02.2003 at about 12-00 mid-night, the deceased was coming on his motorcycle bearing registration No.AP 7Q 5957 from Ibrahimpatnam to proceed to Mangalagiri and when reached Swathi Centre, Bhavanipuram, Vijayawada City, Krishna District, the driver of a lorry bearing registration No.AP 16V 1724 driven it in a rash and negligent manner while coming in opposite direction and hit the motorcycle, due to which, he died instantly.

5. The Station House Officer, Vijayawada, I Town Law and Order Police Station, registered a case in Crime No.73 of 2003 against the driver of the lorry for the offence punishable under Section 304-A IPC.

6. The petitioners, stating that the deceased was working as a Conductor in Andhra Pradesh State Road Transport Corporation, Guntur-I Depot earning Rs.10,500/- per month at the time of his death and had he been alive, he would have earned more than that amount and contributed to the family and due to his death, they lost their sole bread earner, sought the aforesaid compensation.

7. Respondent No.1-owner of the lorry remained *ex parte*.

8. Respondent No.2-insurer opposed the claim requiring the petitioners to prove every allegation mentioned in the petition.

Further stating that the compensation claimed by the petitioners is excessive and exorbitant, sought to dismiss the claim petition.

9. The Tribunal framed five issues about the responsibility for the accident.

10. In order to prove their claim, on behalf of the petitioners, petitioner No.1 herself examined as P.W.1 besides examining an eyewitness as P.W.2 and the Assistant Manager, Personal Department, Guntur-I Depot as P.W.3 and exhibited Exs.A.1 to A.5, besides marking Exs.X.1 and X.2 through P.W.3. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

11. The Tribunal held all the five issues in favour of the petitioners. In order to determine compensation, the Tribunal has relied on the evidence of P.W.3 and Exs.X.1 and X.2. Basing on Ex.X.2, which is service register of the deceased brought by P.W.2, the Tribunal has arrived at the age of the deceased as 51 years, having found that the date of birth of the deceased was recorded as 01.05.1954.

12. Basing on the entries of Ex.X.1-pay slip, noting that the deceased was drawing a gross salary of Rs.10,454/-, taken the net salary for the purpose of calculating loss of dependency and deducted 1/3rd amount towards personal living expenses of the deceased and the remainder, Rs.83,632/- out of Rs.1,25,448/- annual income of the

deceased, construed as the contribution to the family. The Tribunal applied multiplier factor ‘7’ and arrived at Rs.5,85,424/- towards loss of dependency. Towards conventional sums, Rs.15,000/- was awarded towards loss of consortium and another sum of Rs.15,000/- towards loss of estate and, thus, a total compensation of Rs.6,15,424/- was awarded. Concerning the rate of interest, the Tribunal has awarded 6% per annum from the date of petition till realization. The compensation amount was also apportioned among all the petitioners.

13. The aforesaid order is sought to be modified contending in the grounds that the Tribunal faulted in applying the multiplier factor ‘7’ for assessing the compensation.

14. It is also stated that the lower rate of interest at 6% per annum was awarded. It is also stated that the Tribunal ought to have taken gross salary for the purpose of assessing the compensation and, therefore, sought to grant the balance amount.

15. Heard Sri A. Rajendra Babu, learned counsel for the appellants, and Sri Kota Subba Rao, learned Standing Counsel for respondent No.2-insurer. Though, process was completed on respondent No.1-owner, none appears for him.

16. Learned counsel for the appellants-petitioners would submit that in view of the law laid down by the Hon’ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation**

and another[1] and **Rajesh and others v. Rajbir Singh and others**[2], relevant multiplier factor would '11', the permissible deduction towards personal living expenses is 1/4th and even the petitioners are also entitled to future prospects at 15% on the loss of dependency arrived at and the gross salary minus statutory deductions ought to have considered for assessing the loss of dependency and, therefore, urges to determine the compensation basing on the legal principles laid down by the Hon'ble Supreme Court.

17. Sri Kota Subba Rao, learned Standing Counsel for respondent No.2-insurer, opposed the submissions. However, regarding the multiplier factor to be applied, the salary that has to be considered is gross salary minus statutory deductions and 1/4th deduction is permissible towards personal living expenses of the deceased, as the claimants are four in number which aspects have been now well settled by the Hon'ble Supreme Court in the aforesaid decisions and the other decisions rendered later which he fairly concedes. But, the learned Standing Counsel would not agree for award of future prospects for the reason that the Hon'ble Supreme Court in **Shashikala and others v. Gangalakshmamma and another**[3], having disagreed the addition towards future prospects in case of self-employed or person on fixed wages to the compensation towards dependency required the matter to be placed before the

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[1] (2009) 6 SCC 121
[2] 2013 ACJ 1403
[3] 2015 ACJ 1239

Hon'ble Chief Justice for appropriate orders towards constitution of Larger Bench to give a finding. It is also his submission that in **Reshma Kumari v. Madan Mohan**[4], the Hon'ble Supreme Court, though approved the method that an addition of 50% of annual salary income of the deceased towards future prospects, where the deceased had permanent job and was below 40 years and the addition should be only 30%, if the age of the deceased was 40 to 50 years but held that no addition should be made where the age of the deceased would be more than 50 years and, therefore, he would submit that the appellants herein are not entitled to addition of 15% towards future prospects. Learned Standing counsel would also submit that the decision in **Reshma Kumari** (supra 4) is rendered by a Three-Judge Bench, but the later Three-Judge Bench of the Hon'ble Supreme Court, which decided **Rajesh** (supra 2), has not referred to the ruling in **Reshma Kumari** (supra 4) and, therefore, the petitioners are not entitled to addition of 15%.

18. Now the short point that arises for consideration is, whether the appellants are entitled to enhancement of compensation?

19. Ex.X.1 is the salary certificate and Ex.X.2 is the photostat copy of the service register of the deceased. Ex.X.2 indicates that the deceased was a permanent employee as he joined service when he was appointed on 05.02.1976 as bus conductor. His

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[4] 2013 ACJ 1253 (SC)

initial pay at Rs.90/- per month was fixed in the scale of pay Rs.90-6-150-7-192-8-200 and his date of compulsory retirement is shown as '30.04.2009'. The deceased was drawing a gross salary of Rs.10,454/- and the net salary of Rs.4,412/- at the time of accident. The statutory deductions that are required to be made are the professional tax of Rs.100/- and income tax paid at Rs.200/-. The other deductions made are contributions, which are refundable. Therefore, only a sum of Rs.300/- has to be deducted towards statutory deductions from the gross salary of Rs.10,454/-. Thus, for the purpose of assessing the compensation, the salary of Rs.10,154/- per month has to be taken or Rs.1,21,848/- per annum. Towards personal living expenses of the deceased, since 1/4th deduction is permissible as the claimants are four in number, when 1/4th from the annual income is deducted, the contribution to the family would work out to Rs.91,386/-. Since the multiplier factor '11' is applicable, the loss of dependency works out to Rs.10,05,246/-. Thus, the petitioners are entitled to the said amount towards loss of dependency.

20. Concerning addition of 15% towards future prospects, the submission made by the learned Standing counsel for respondent No.2-insurer requires advertence in the light of the rulings of the Hon'ble Supreme Court. It is his submission that in **Sarla Verma** (Supra 1), the Hon'ble Supreme Court laid down the law that the addition should be 50% of actual salary for the age group of persons below 40 years and the addition should be only 30% for the age group

of persons between 40 to 50 years and there should be no addition where the deceased was more than 50 years. In **Reshma Kumari's case** (supra 4), a three-judge bench of the Hon'ble Supreme Court while approving addition of 50% of the actual salary for the deceased with a permanent job aged below 40 years and the addition of 30% if the age of the deceased was 40 to 50 years, held that no addition should be made where the deceased was more than 50 years. It is his submission that the decision in **Rashma Kumari** (Supra 4) was rendered on 02-04-2013, ten days earlier to the decision in **Rajesh** (Supra 2) rendered by a Coordinate Bench on 12-04-2013, expanding the addition of 50%, 30% to the age groups mentioned in the above, and 15% in the case where the victim was between the age group of 50 - 60 years and no addition thereafter, has not referred to the ruling in **Reshma Kumari** (supra 4), and in view of the said issue being referred to a larger bench by a two-judge bench of the Hon'ble Supreme Court in **Shashikala** (supra 3)**,** the petitioners are not entitled to future prospects.

21. It is true, the ruling in **Reshma Kumari** was not referred to in **Rajesh** (supra 2), but it is a later judgment rendered by the Hon'ble Supreme Court by a Coordinate Bench. In **Rejesh,** the Hon'ble Supreme Court viewed that the addition of 50% and 30% where the deceased victim was below 50 years and 40 years respectively, also applies in the case of self-employed persons or persons with fixed wages and further provided addition of 15% where

the victim was between the age group of 50 and 60 years so as to make the compensation just, equitable, fair and reasonable. The consequences if the law declared in **Rajesh** (supra 2) is not followed firstly, the advantage of having the benefit of beneficial legislation gets deprived; second, in case the larger bench approves the law laid down in **Rajesh** (supra 2), the petitioners herein would be deprived of their legitimate claim for addition of 15% towards future prospects as the petitioners may not be justified in resorting to recourse of review which appears to be impermissible under Order XLVII C.P.C.

22. Further, the decision in **Rajesh** is rendered by a coordinate bench subsequent to the decision in **Reshma Kumari**. Therefore, it is desirable to apply 15% addition towards future prospects. When 15% is reckoned, it works out to Rs.1,50,787/- towards future prospects. The petitioners are thus, entitled to Rs.11,56,033/- [Rs.10,05,246/- + Rs.1,50,787/-] towards loss of dependency and future prospects. Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[5] as against Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate granted by the Tribunal. The petitioners are, thus, entitled to a total compensation of Rs.12,06,033/- as against Rs.6,15,424/- awarded by the Tribunal, which of course, exceeds the claim made by them, but, since the

[5] LAWS (SC) -2014-4-67

appeal is being preferred by the petitioners seeking enhancement, there cannot be any hindrance to grant the amount exceeding the claim made by the petitioners in view of the law declared by the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[6], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[7] and **Rajesh** (Supra 2). The apportionment among the petitioners would be in accordance with the apportionment made by the Tribunal. The petitioners are directed to pay court fee on the amount of Rs.6,033/- within one month from the date of receipt of a copy of the judgment.

23. So far as the rate of interest is concerned, the Tribunal has granted 6% per annum which is on lower side and, therefore, the same is enhanced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

24. Accordingly, the instant appeal is allowed and the order and decree, dated 22-12-2006, in M.V.O.P. No.257 of 2003 passed by the Tribunal are modified by enhancing the compensation to Rs.12,06,033/- from Rs.6,15,424/- awarded by the Tribunal with interest at 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

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6. AIR 2003 SC 674
7. 2012 ACJ 191 (SC)

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

A. SHANKAR NARAYANA, J

DATE: 25-11-2016
siva/Mgr