HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.2463 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.2,02,000/- as compensation by order and decree, dated 22.04.2008, passed in M.A.T.O.P.No.1144 of 2006 by the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court – II), Khammam, as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the petitioners – claimants in the aforesaid O.P. preferred the present appeal seeking enhancement of compensation.

2. The fact situation occurring in the instant case leading to the death of one T. Srinivasa Rao, husband of petitioner No.1, incidentally father of petitioner Nos.2 and 3 and son of petitioner Nos.4 and 5, is not in dispute. The only dispute between the parties is in regard to the quantum of compensation awarded by the Tribunal.

3. Heard Sri P. Srihari Nath, learned counsel for the appellants, and Sri V. Venkatarami Reddy, learned Standing Counsel for respondent No.2.

4. Though service was completed on respondent No.1 – owner of the offending vehicle, none appears for him. Even, he remained *ex parte* before the Tribunal and suffered decree.

5. The Tribunal, basing on the pleadings, framed as many as ten issues. The Tribunal has taken the age of the deceased as 26 years, basing on the entries in the Post-mortem Examination Report. However, disbelieving the evidence of PW.3 and discarding Ex.A5 on the ground that the name of the deceased was not recorded in possessor's coloumn, did not consider the stand of the appellants that the deceased took Ac.10-00 of land belonging to PW.3 on lease and used to cultivate the same. Therefore, the Tribunal, in the absence of any further legally acceptable evidence being placed by the appellants, borrowed the notional income at Rs.15,000/- per annum from the second schedule to Section 163A of the Motor Vehicles Act and having deducted 1/3rd therefrom towards personal living expenses of the deceased and applying multiplier '18', again borrowing the same from the very same second schedule, worked out the loss of dependency at Rs.1,80,000/- and granted the same, besides granting Rs.2,000/- towards funeral expenses, Rs.15,000/- towards loss of consortium and Rs.5,000/- towards loss of estate, thus, making a total of Rs.2,02,000/- with interest at 7.5% per annum and apportioned the same amongst the appellants.

6. The submission of the learned counsel for appellants is that the Tribunal did not properly appreciate the evidence on record, more particularly, in view of the law declared by the Honourable Supreme

Court in **Sarla Verma v. Delhi Transport Corporation**[1] and **Rajesh and others v. Rajbir Singh and others**[2] and the law now well settled that even a labourer would be earning Rs.30,000/- per annum or more than Rs.2,000/- per month, sought to apply the same and determine the compensation by granting future prospects even.

7. On the other land, learned Standing Counsel for respondent No.2 would submit that even applying the change in decisional law, the claim amount can be awarded by way of enhancement, as the very claim was limited to Rs.3,50,000/-.

8. The Tribunal, no doubt opined that, in the absence of legally acceptable evidence being placed by the appellants taken the notional income at Rs.15,000/- per annum, but in view of the well settled proposition, Rs.2,000/- per month can be atleast computed as the income of a labourer, in which case, it would be Rs.24,000/- per annum. Since the appellants are five in number, 1/4th deduction is permissible to towards personal living expenses of the deceased. When 1/4th is deducted therefrom, contribution of the deceased to the family would work out to Rs.18,000/- per annum. The relevant multiplier as per the table formulated by the Honourable Supreme Court in **Sarla Verma**'s case (supra 1) is '17' and when the same is applied, loss of dependency would work out to Rs.3,06,000/-. The appellants are also entitled to additional amount towards future

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[1] (2009) 6 SCC 121
[2] (2013) 9 SCC 54

prospects, as per the decision of the Honourable Supreme Court in **Rajesh**'s case (supra 2). Towards the same, the appellants are entitled to 50% of the loss of dependency, which works out to Rs.1,53,000/-. Thus, towards loss of dependency, including future prospects, the appellants are entitled to Rs.4,59,000/-. This apart, the appellants are also entitled to Rs.50,000/- towards conventional sum, in view of the decision of the Honourable Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3]. Thus, the appellants are totally entitled to Rs.5,09,000/- with interest at 7.5% per annum, which is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh**'s case (supra 2).

9. The enhanced amount of Rs.3,07,000/- shall be apportioned among the appellants in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. The appellants are directed to pay the Court fee on an amount of Rs.1,59,000/- within three months from today.

10. Accordingly, the appeal is allowed. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

December 27, 2016.
MD

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