THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1534 of 2009

JUDGMENT:

Feeling dissatisfied, with the award of Rs.7,40,000/- as compensation for the death of one Eklar Babu @ Shankar (deceased) in a road accident, by the award and decree dated 07.05.2007, in O.P.No.279 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal'), as against the claim of Rs.12,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioners – claimants preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

2. The appellants herein, who are the wife, children and the parents of the deceased, are the petitioners, while respondent Nos.1 & 2, who are the owner of the lorry bearing registration No. AP–21/T-1718 and the insurer, respectively, were respondent Nos.1 & 2, respectively, in the original petition.

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

4. The facts in brief are that on 02.12.2002, while

the said E.Babu was driving the jeep bearing registration No. ADL/T–8593 from Banswada towards Yellareddy, at about 4.30 p.m., when the jeep reached Mohammadnagar limits, a lorry bearing registration No. AP-21/T-1718, driven by its driver at high speed in a rash and negligent manner, came on wrong side of the road and dashed the jeep, in which some passengers were also travelling, resulting in multiple fractures to the head of the said E.Babu. He was immediately shifted to the Government Hospital, Yellareddy, where he succumbed to injuries while undergoing treatment. The petitioners, being the wife, daughters and the parents of the deceased, claiming that the deceased was 24 years earning Rs.15,000/- per month by doing seasonal business in mangoes and tamarind, sought a compensation of Rs.12,00,000/-.

5. Before the Tribunal, respondent Nos.1 and 2, who are the owner of the lorry and the insurer, remained *ex parte*. Thus, the award is an *ex parte* award, of course, based on the evidence let in by the petitioners.

6. Petitioner No.1 examined herself as P.W.1, besides examining an eye-witness as P.W.2 and another witness as P.W.3 to prove the earnings of the deceased, and marked Exs.A1 to A6. Ex.A6 is the xerox copy of the receipt for the amount paid towards insurance policy. The other documents are police records.

7. The Tribunal, basing on the evidence of P.W.2 and supported by the contents of Exs.A1 to A5, which are the certified copies of F.I.R, charge sheet, Inquest Report, Post-Mortem Examination Report and Motor Vehicles Inspector's Report, respectively, recorded a finding that due to rash and negligent driving of the driver of the lorry, the accident has occurred.

8. In regard to determination of compensation, the Tribunal, having discussed the evidence of P.Ws.1 and 3 and in the absence of tangible documentary evidence to prove that the deceased was earning Rs.15,000/- per month, adopted via media approach and fixed the monthly earnings at Rs.5,000/- or annual income at Rs.60,000/- and, by deducting 1/3rd there from towards his personal living expenses, taken the remaining amount of Rs.40,000/- as contribution to the family. By taking the age of the deceased as 30 years, which finds place in Post Mortem Examination Report marked as Ex.A4, the Tribunal applied multiplier '18', as mentioned in the Second Schedule to Section 163-A of the Act, and arrived at Rs.7,20,000/- towards loss of dependency. Further, the Tribunal granted a sum of Rs.15,000/- towards loss of consortium, besides granting Rs.5,000/- towards transportation charges and funeral expenses. Thus, making a total compensation of Rs.7,40,000/- with interest at 7.5% per annum, fastening

joint and several liability on both the respondents.

9. Dissatisfied, the petitioners preferred the present appeal, requesting to grant the balance amount.

10. Heard Sri Venkateshwar Varanasi, learned counsel for the appellants. The appellants have endorsed in the cause title of the Memorandum of Appeal, that respondent No.1 is not a necessary party. Respondent No.2, though, was served with notice, has not entered appearance. Notice papers have been verified. In fact, the postal acknowledgement sent through the Registry would contain the seal of National Insurance Company Limited with signature thereon. Thus, it is really unfortunate that the Insurance Company did not make its appearance, despite service of notice in the present appeal and also in the O.P filed before the Tribunal, for the reasons best known to the concerned Manager.

11. Now, the short question that arises for consideration is whether the compensation amount granted by the Tribunal is just and adequate or whether the petitioners are entitled to enhancement?

12. The finding recorded by the Tribunal that the petitioners were unable to prove that the deceased was earning Rs.15,000/- per month, cannot be disturbed. The Tribunal has, somehow, taken Rs.5,000/- as monthly earnings of the deceased without any discussion or referring

to the standards maintained by the Minimum Wages Act. However, since there has been no challenge on account of Insurance Company failing to represent before the Court, the said finding has to be maintained and is, accordingly, maintained.

13. The further questions that require consideration are, whether the multiplier factor '18' applied by the Tribunal and the permissible deduction towards personal expenses of the deceased can be maintained.

14. The dependants are five in number and, therefore, the law declared by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] squarely applies. As per the said decision, the permissible deduction is 1/4th towards personal expenses of the deceased and the same works out to Rs.15,000/-. When the same is deducted from the annual income of Rs.60,000/-, the contribution to the family works out to Rs.45,000/-. The relevant multiplier is '17' for the age group between 26 and 30 years as per the table formulated by the Hon'ble Supreme Court in the very same decision in **Sarla Varma** referred to supra. When the said multiplier factor '17' is applied, the loss of dependency works out to Rs.7,65,000/-. In addition, the petitioners are also entitled to 50% thereon towards future prospects by virtue of the law declared by the Hon'ble Supreme Court in **Rajesh and**

others v. Rajbir Singh and others[2] and conventional sum of Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[3].

15. Thus, the petitioners are entitled to a total sum of Rs.11,97,500/- (Rupees eleven lakhs ninety seven thousand five hundred only), as against Rs.7,40,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh's** case referred to above, the same rate of interest is maintained on the entire amount awarded from the date of petition till realisation**.**

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

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

JUSTICE A.SHANKAR NARAYANA

12.08.2016

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[1] (2009) 6 Supreme Court Cases 121

[2] 2013 ACJ 1403

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