HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1325 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.3,12,200/- as compensation by the order dated 08.02.2007 in O.P. No.39 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-
I Additional District Judge, Warangal (for short, 'the Tribunal') as against the claim of Rs.8,60,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Bommeraboina Ramesh in a road accident, the instant appeal is preferred under Section 173 of the Act, seeking enhancement of compensation.

2. The appellants herein, who are wife, children and mother of the said Ramesh, are the petitioners, while respondent Nos.1 to 3 herein, who are the owner and insurers of the auto-rickshaw bearing registration No.AP 36W 1396, are respondent Nos.1 to 3, 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 on 29.08.2004, the said Ramesh (deceased) along with petitioner No.1 went

to his in-laws' house on the occasion of Rakhi festival at Pothurajupally and, having dropped his wife, was returning on his motorbike Bajaj Kawasaki bearing registration No.AP 9R 3013 and at about 2-30 p.m., when he reached Machapur village, an auto-rickshaw bearing registration No.AP 36W 1396 driven by respondent No.1 rashly and negligently at high speed dashed the motorbike, due to which he fell down and sustained grievous injuries and he succumbed to the injuries at about 5-15 p.m. on the next day. The petitioners, claiming that the deceased was doing brick manufacturing and agriculture earning Rs.6,000/- per month, sought the aforesaid sum from respondent Nos.1 to 3.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent Nos.2 and 3 are one and the same Insurance Company, but represented by different branches. Respondent No.2 opposed the claim, but no specific plea was agitated touching violation of terms and conditions of the insurance policy.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining one Gorre Babu as P.W.2 and marked Exs.A.1 to A.8 to substantiate their claim; whereas, on behalf of the Insurance Company, no witnesses were examined, but a copy of insurance policy

was marked as Ex.B.1 on consent.

7. The Tribunal, basing on the evidence of P.W.2 and documentary evidence, held issue No.1 in favour of the petitioners.

8. So far as issue Nos.2 and 3 are concerned, taking the age of the deceased between 20 and 25 years, since in F.I.R., his age was recorded as 21 years, whereas in the inquest panchanama, it was recorded as 24 years, and the monthly earnings at Rs.2,000/-, deducted 1/3rd towards personal expenses and taken the balance amount towards contribution to the family and applying multiplier '17.95' basing on the decision of this Court in **Bhagwandas v. Mohd. Arif**[1], worked out the loss of dependency at Rs.2,87,200/-. Besides the same, the Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium to petitioner No.1, Rs.10,000/- towards loss of estate and Rs.3,000/- towards loss of love and affection and other miscellaneous expenditure, making a total of Rs.3,12,200/- with interest at 7.5% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence and ought to have taken monthly income at higher rate rather than Rs.2,000/- and thereby, sought to grant the balance amount.

10. Heard Sri V.Brahmaiah Chowdary, learned counsel for the appellants-petitioners. Though, service was completed on respondent Nos.1 to 3, none appears for them.

11. The finding recorded by the Tribunal in taking the age of the deceased between age group of 20 and 25 years cannot be faulted as petitioner No.2 was just 10 months old on the date of the accident.

12. The monthly income of the deceased taken by the Tribunal at Rs.2,000/- also cannot be faulted in view of the fact that there is no material forthcoming to show that the deceased was earning Rs.6,000/- per month as contended.

13. But the deduction of 1/3rd made by the Tribunal requires modification for the reason that the petitioners are four in number as dependents on the deceased in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[2]. Hence, 1/4th deduction when made, the contribution towards family would work out to Rs.1,500/- per month or Rs.18,000/- per annum. The Tribunal has taken multiplier 17.95 and it has to be rounded off to '18' in view of the multiplier factor mentioned in the table formulated in **Sarla Verma's** case

(supra 2). When the same is applied, the loss of dependency works out to Rs.3,24,000/-. Again, the petitioners are entitled to future prospects in addition to the loss of dependency worked out at 50% of the loss of dependency, which comes to Rs.1,62,000/-. Thus, the petitioners are totally entitled to Rs.4,86,000/- towards loss of dependency including future prospects. The conventional amounts granted by the Tribunal towards funeral charges, loss of consortium, loss of estate and loss of love and affection and other miscellaneous expenditure totaling to Rs.25,000/- is enhanced to Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3].

14. Thus, the petitioners are entitled to a total sum of Rs.5,36,000/- (Rupees five lakh and thirty six thousand) as against Rs.3,12,200/- granted by the Tribunal towards compensation and the same is accordingly granted. 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 entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4].

15. Accordingly, the instant 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. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th August, 2016

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[1] AIR 1988 AP 99

[2] (2009) 6 SCC 121

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

[4] 2013 ACJ 1403