HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2759 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners, aggrieved by the order and decree dated 02.08.2007, passed in O.P.No.991 of 2003 by the Chairman, Motor Accidents Claims Tribunal (IV Additional District Judge) (FTC), Nizamabad District (for brevity "the Tribunal"), granting compensation of Rs.3,04,000/-, as sought for, with interest @ 7.5% per annum, for the death of one Baddam Srinivas Reddy in a road accident that occurred on 21.02.2003 at about 6-30 p.m., near Lakkkora Village shivar on NH-16 road, seeking enhancement of compensation.

2. The appellants herein are the petitioners, and respondent Nos.1 and 2, who are Managing Director and Depot Manager of Armoor Depot, Nizamabad District, respectively, of erstwhile A.P. State Road Transport Corporation (for brevity "the Corporation") are respondent Nos.1 and 2, in O.P.No.991 of 2003. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.991 of 2003 before the Tribunal.

3. The deceased – Baddam Srinivas Reddy, who is the husband of petitioner No.1, father of petitioner Nos.2 and 3, and son of petitioner Nos.4 and 5, at the relevant time, was presiding over the post of President of Single Window and Chairman of Primary Agricultural Cooperative Society, Shetpalli Village. He met with an accident on 21.02.2003 at about 6.30 p.m., while he along with one Sai Kumar was proceeding on Yamaha Motor Cycle from Narayanpet to Shetpalli Village and when they reached near Lakkora Village shivar on NH – 16 road, the driver of RTC Bus bearing No.AP 10-Z 310, belonging to Armoor Depot of the respondent – Corporation, driven at a high speed and in a rash and negligent manner, dashed against the motor cycle of the deceased, due to which the deceased died instantaneously. The petitioners, stating that the deceased, who died at the age of 28 years, was earning Rs.15,000/- per month and, besides holding the said post, he was owning properties, and sought a sum of Rs.3,04,000/- towards compensation against respondent Nos.1 and 2.

4. Respondent Nos.1 and 2 have filed a common counter opposing the claim made by the petitioners by raising various pleas and contended that the compensation sought for by the petitioners was excessive and exorbitant and hence, sought to dismiss the claim petition.

5. The Tribunal originally framed the following three issues for determination:

(i) Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle Lorry bearing No.AHH-9672 by its driver resulting in death of the deceased?

(ii) Whether the petitioner is entitled for compensation. If so, what amount and from which of the respondents?

(iii) To what relief?

However, the Tribunal re-cast issue No.1, as there appears to be some error in framing the said issue and after recast, issue No.1 reads as follows:

(i) Whether the accident was occurred due to the rash and negligent driving of the driver of the Bus bearing No.AP-10Z-310 of Armoor Depot and caused death of the deceased or not?

6. During the course of enquiry, petitioner No.1 – wife of the deceased examined herself as P.W.1, besides examining an eye-witness as P.W.2, and marked documents under Exs.A.1 to A.13. On behalf of the respondent – Corporation, none were examined and no document was marked.

7. The Tribunal, having extracted the gist of evidence and having analysed evidence on record, recorded findings in favour of the petitioners. In the process of determination of compensation, to which the petitioners are entitled, the Tribunal, considering the fact that the deceased, being an agriculturist and President of Single Window, must have been earning atleast Rs.2,500/- to Rs.3,000/- per month, and after

deducting 1/3rd towards personal living expenses, took Rs.1,500/- per month and thus arrived at a sum of Rs.18,000/- per annum towards contribution to the family. The Tribunal fixed the age of the deceased as 32 years as on the date of accident, basing on the entries in Exs.A.10, A.12 and A.13, which are copies of driving licence, inquest report and Post-mortem Examination Report, respectively, of the deceased and after applying the multiplier '17', as per II-Schedule to Section 163-A of the Act, arrived at a sum of Rs.3,06,000/- towards loss of dependency. Besides the same, the Tribunal also awarded Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, and Rs.2,000/- towards funeral expenses. Thus, though, a total sum of Rs.3,33,400/- was arrived at towards compensation, the Tribunal restricted the same to Rs.3,04,000/-, being the claim made by the petitioners, with interest @ 7.5% per annum.

8. The petitioners, dissatisfied with the aforesaid order and decree, despite awarding the amount claimed by them, approached this Court by way of the present Civil Miscellaneous Appeal.

9. It is borne out from the record, at the time of preferring the appeal, along with the grounds of appeal, MACMA.MP.No.3883 of 2009, under Order VI Rule 17 of C.P.C., was filed seeking permission to substitute the claim

amount “Rs.3,04,000/-“ with “Rs.10,00,000/-“ by effecting necessary amendments in O.P.No.991 of 2003. Since the said petition is pending through out and as the learned Standing Counsel for the respondent – Corporation has not opposed the same, the said application is allowed today, vide separate docket order.

10. Heard Sri M. Rajamalla Reddy, learned counsel for the appellants - petitioners as well as Sri N. Vasudeva Reddy, learned Standing Counsel for respondent – Corporation and perused the order under challenge and also evidence on record.

11. Admittedly, no appeal is preferred by the respondent – Corporation challenging the order of the Tribunal. The Tribunal, having arrived at a definite sum, while determining the compensation, restricted the same to the claim made by the petitioners and, accordingly, passed the decree. That appears to be the reason why the present appeal has been preferred by the petitioners. However, since the Statutory mandate under Section 166 of the Act being that the Tribunal has to determine just and fair compensation and award the same, there cannot be any embargo to re-appraise the evidence on record and award just and adequate compensation, to which the petitioners are entitled.

12. The Tribunal, in para-18 of its order, observed thus:

> "18. Being an agriculturist and President of Single Window the earning of the deceased can be considered atleast @ Rs.2,500/- to Rs.3,000/- per month and after deduction of 1/3rd atleast his contribution to the family can be assessed Rs.1,500/- per month. The annual contribution comes to Rs.18,000/-."

13. From the above, it is clear that the Tribunal went wrong in taking a sum of Rs.1,500/- per month towards contribution to the family, which is half of the upper limit of earnings of the deceased at Rs.3,000/- per month, which it ought not to have taken. Admittedly, there are 5 dependents on the deceased. Therefore, as per the law laid down by the Hon'ble Supreme Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER[1], a deduction of 1/4th of his annual income is permissible towards personal living expenses of the deceased, which comes to Rs.9,000/- per annum, and when the same is deducted from the annual income of Rs.36,000/- of the deceased, the contribution to the family works out to Rs.27,000/-. Since the deceased was aged 32 years old, as per the very same decision in SARLA VARMA's case (supra 1), the multiplier factor '16' is applicable and, in which event, the loss of dependency works out to Rs.4,32,000/-.

14. The law is now well settled that so far as future prospects are concerned, for the age group of the persons

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[1] (2009) 6 Supreme Court Cases 121

between 30 and 40 years, 50% of the loss of dependency has to be taken towards future prospects. In the instant case, 50% of the loss of dependency works out to Rs.2,16,000/-. This apart, the petitioners are also entitled to a sum of Rs.50,000/- towards conventional sum as against the amounts of Rs.27,000/- (Rs.15,000/-, Rs.10,000/- and Rs.2,000/- granted by the Tribunal towards loss of consortium, loss of estate and funeral expenses, respectively), in view of the decision of the Hon'ble Supreme Court in RAMILABEN CHINUBHAI PARMAR VS. NATIONAL INSURANCE COMPANY[2].

15. Thus, the petitioners are totally entitled to a compensation of Rs.6,98,000/- (Rs.4,32,000/- towards loss of dependency + Rs.2,16,000/- towards future prospects + Rs.50,000/- towards conventional sum) with interest @ 7.5% per annum, which is in tune with the decision of the Hon'ble Supreme Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS[3].

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.3,04,000/- to Rs.6,98,000/- (Rupees six lakhs ninety eight thousand only) with interest @ 7.5% per annum from the date of the petition till realization. There shall be no order as to costs.

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[2] LAWS (SC) -2014-4-67
[3] 2013 ACJ 1403

17. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

15.11.2016.
Msr

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