

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2390 OF 2009

JUDGMENT:

On the ground that a meager compensation of Rs.1,25,500/- was granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District and Sessions Judge, Tirupati (for short 'Tribunal') by the award and decree dated 17.02.2009 in M.V.O.P. No.411 of 2006, as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, the present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, is preferred by the petitioner, widowed daughter of one P. Saraswathi (who died in the accident), seeking enhancement of compensation.

2. Heard Sri P. Govind Reddy, learned counsel for the petitioner - appellant, and Smt. Pushpinder Kaur, learned standing counsel for respondent No.2 - insurance company.

3. Despite service of notice, respondent No.1, owner of the Jeep bearing No.AP-02-U6884 that involved in the accident, has not entered appearance. He remained *ex parte* before the Tribunal also.

4. Perused the order and decree under challenge and the material on record.

5. The Tribunal having framed two issues with regard to death of the deceased in a road accident, which facts are not in dispute, taking the age of the deceased as 65 years and though, her income shows as Rs.7,531/- per month based on the evidence of PW.3 supported by Ex.A-5, taken only Rs.2,000/- per month, on the premise that her contribution must have been to that extent only, which works out to Rs.24,000/- per annum (Rs.2,000/- x 12), applying multiplier '5', arrived at Rs.1,20,000/- (Rs.24,000 x 5) towards loss of dependency. Besides the same, the Tribunal has also awarded Rs.1,000/- towards transport expenses, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, making a total of Rs.1,25,5000/- and awarded the same with interest at 7.5% per annum.

6. The learned counsel for the petitioner (appellant) would contend that the Tribunal has not resorted to the structural formula in accordance with the principles laid down and ought to have deducted only $\frac{1}{3}^{\text{rd}}$ instead of taking Rs.2,000/- as monthly contribution of the deceased and capitalized it with multiplier factor '5'; even conventional sums awarded by the Tribunal are on lower side and, therefore, sought to grant the balance amount.

7. Per contra, learned standing counsel for the insurer submits that the Tribunal ought not to have awarded any amount to the petitioner since she is a married daughter and no dependency can be viewed.

8. Though, such a ground was raised, still, no appeal is preferred by the insurer. Therefore, now the said ground is not available either to defend or to take that request in the instant appeal.

9. The Tribunal while arriving at Rs.2,000/- per month as contribution to the petitioner by the deceased, has not assigned any reasons and only observed that the said amount would be sufficient for maintenance and welfare of the petitioner. Certainly, that cannot be a ground, as she is a widow and dependant on the deceased alone, to restrict, instead of deducting $1/3^{\text{rd}}$ from the income of the deceased. Therefore, while construing the monthly income of the deceased at Rs.7,531/- or Rs.7,500/-, when $1/3^{\text{rd}}$ i.e., Rs.2,500/- ($\text{Rs.7,500} \times 1/3$) is deducted, the remaining Rs.5,000/- would be the multiplicand and when capitalized the same with multiplier factor '5', loss of dependency works out to Rs.3,00,000/- ($\text{Rs.5,000/-} \times 12 \times 5$). The conventional sums granted by the Tribunal at Rs.1,000/- towards transportation, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, are maintained.

10. Thus, the petitioner is entitled to a total compensation of Rs.3,05,500/- (Rupees three lakhs five thousand and five hundred only) as against Rs.1,25,500/- awarded by the Tribunal, and the same is accordingly granted maintaining the rate of interest awarded by the Tribunal at 7.5% per annum on the entire compensation, which includes enhanced compensation, since the same is in accordance with

the rate of interest granted by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

November 23, 2016.

PV

2. 2013ACJ1403 = 2013(4)ALT35

A. SHANKAR NARAYANA, J

