HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2735 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners seeking enhancement of compensation having got dissatisfied with the award of Rs.2,70,000/- with interest at 7.5% per annum, fastening liability on respondent Nos.1 to 3, while dismissing the claim petition against respondent No.4 - erstwhile Andhra Pradesh State Road Transport Corporation, Hyderabad, represented by its Managing Director, by order and decree, dated 27-11-2008 in M.V.O.P. No.1011 of 2006, on the file of the Motor Accident Claims Tribunal - cum - District Judge, Khammam (for short 'the Tribunal').

2. The appellants herein, who are husband and children of deceased - Terala Renuka, are the petitioners, while respondent Nos.1 to 3, who are driver, owner and insurer of auto-rickshaw bearing registration No.AP 20V 8760, respectively, are respondents as such and respondent No.4 - APSRTC is respondent No.4 in the aforesaid O.P.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP.

4. The claim was laid by the petitioners under Section 166 of the Act for grant of Rs.7,00,000/- as compensation for the death of one Terala Renuka, whose death occurred in a road accident.

5. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal. Respondent No.3 - Insurer contested the claim, and so also respondent No.4.

6. The Tribunal, basing on the pleadings, framed three (3) issues. In order to determine the liability as well as compensation to which the petitioners are entitled, if any, examined PWs.1 and 2 and marked Exs.A-1 to A-5 on behalf of the petitioners. On behalf of respondent No.3 - Insurer, RW.1 was examined and Ex.B-1, copy of insurance policy, was marked.

7. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal has computed the compensation by fixing the income at Rs.2,000/- towards services rendered by the deceased or Rs.24,000/- per annum and referring to the ruling in **Supe Devi and others v. National Insurance Company Limited and others**[1], deducted 1/3rd there-from, applying multiplier '16', arrived at Rs.2,56,000/- towards loss of dependency. The Tribunal also granted a sum of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transport charges, making a total of

[1]. 2002 ALT 1166

Rs.2,70,000/- as compensation with interest at 7.5% per annum thereon. The Tribunal basing on the finding recorded on issue No.1 and basing on the contents of charge sheet - Ex.A-4, holding that the accident occurred due to rash and negligent driving of the driver of auto-rickshaw, fastened liability on respondent Nos.1 to 3 jointly and severally, while dismissing the claim petition against respondent No.4.

8. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellants - petitioners. It is endorsed by the appellants in the cause title of the grounds of appeal that respondent Nos.1 and 4 are not necessary parties. Service on respondent Nos.2 and 3 was, in fact, effected, but none appears for them.

9. The learned counsel for the petitioners has placed reliance on the decisions in **Rajesh and others v. Rajbir Singh and others**[2]; **Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others**[3], **Kala Devi and others v. Bhagwan Das Chauhan and others**[4], **Shashikala and others v. Gangalakshmamma and another**[5], **Pushkar Mehra v. Brij Mohan Kushwaha and others**[6] and **Kalpanaraj and others v. Tamil Nadu State Transport Corporation**[7], to support his arguments that the

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2. 2013 ACJ 1403
3. (2015) 4 SCC 237
4. (2015) 2 SCC 771
5. (2015) 9 SCC 150
6. (2015) 12 SCC 688
7. (2015) 2 SCC 764

consortium granted by the Tribunal is on lower side and requests to grant Rs.1,00,000/- towards consortium itself. Concerning domestic services, it is according to him that as per decisional law Rs.2,500/- per month be taken and, therefore, sought to hike the monthly earnings as the Tribunal has not properly evaluated the evidence on record and fixed the income at Rs.2,000/- per month and to grant the compensation.

10. Perused the evidence on record. In fact, the Tribunal has given a finding that no material was placed to show that the husband of the deceased, who is petitioner No.1 herein, was running a Kirana business. However, keeping in view, the decision of the Hon'ble Supreme Court in **Jitendra Khimshankar Trivedi's Case** (Supra 3), that towards domestic services also, a sum of Rs.2,500/- was treated as earnings per month, applying the same principle, when worked out the annual income, it would come to Rs.30,000/-. Since the dependants are numbering '3', when 1/3rd is deducted, remainder Rs.20,000/- would be the contribution or the value of the services rendered by the deceased to the family, more particularly, petitioner No.3 being a minor by then and petitioner No.2 appears to be unmarried, aged 19 years and was a student, and since the deceased age was taken as 38 years, the relevant multiplier is '15' and, thus, loss of dependency in terms of value of the services rendered by the deceased would work out to Rs.3,00,000/- [Rs.20,000/- x 15]. So far

as the conventional sums are concerned, a sum of Rs.50,000/- is granted as against the amounts granted by the Tribunal in aggregate. Thus, in all, the petitioners are entitled to Rs.3,50,000/- as compensation as against the amount of Rs.2,70,000/- granted by the Tribunal.

11. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 1) and, therefore, the same is maintained.

12. In the result, the appeal is allowed in part, and the order and decree, dated 27-11-2008, in M.V.O.P. No.1011 of 2006, passed by the Tribunal are modified enhancing the compensation to Rs.3,50,000/- (Rupees three lakhs and fifty thousand) from Rs.2,70,000/- with interest at 7.5% per annum thereon from the date of petition till realization. The enhanced compensation amount shall be apportioned among the petitioners in the same proportion in which the original compensation amounts were directed to be apportioned and disbursed by the Tribunal. No order as to costs.

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

A. SHANKAR NARAYANA, J

November 25, 2016.
Mgr