

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. Nos.1656, 1657, 1658 AND 1659 OF 2005

COMMON JUDGMENT:

These four appeals preferred by the respective appellants - petitioners arise out of one and the same accident and in three of the matters, claims relate to deaths and in one matter i.e., M.A. C.M.A. No.1658 of 2005, claim relates to injuries. The corresponding OPs. are M.V.O.P. Nos.178, 182, 180 and 179 of 2003 respectively.

2. All the four O.Ps. were disposed of along with O.P. No.181 of 2003 by a common order, dated 28.01.2005, by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Warangal, whereby and whereunder, compensation of Rs.2,50,000/- as against the claim of Rs.4,50,000/-, Rs.75,000/- as against Rs.2,00,000/-, Rs.90,000/- as against Rs.3,00,000/-, and Rs.1,30,200/- as against Rs.4,00,000/-, respectively, were granted for the claims laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). Aggrieved thereby, the respective petitioners have been seeking enhancement of compensation on the ground that the compensation granted by the Tribunal is on lower side.

3. The facts would show that on 13.11.2002, the

persons,

who died in the accident, and the injured petitioners have engaged a Jeep bearing No.AP-36-V-2561 on hire, to go to Basara, and when they reached near Ellamma Temple, Gandikota village, at about 4.30 a.m., since driver of the Jeep drove it at high speed in a rash and negligent manner, he was unable to control speed and thereby hit a culvert, resulting the Jeep turning upside down and consequently three (3) of them died and two persons suffered injuries. Thus, legal heirs of the persons, who died in the accident, and the injured petitioners have laid their respective claims for various amounts, as mentioned in the above, from respondent Nos.1, 2 and 3, who are owner and insurers, respectively, of the Jeep that involved in the accident.

4. In all the matters, respondent No.1 is owner of the Jeep and respondent Nos.2 and 3 which are branch office and divisional office at Vijayawada and Warangal, respectively, are insurers of the Jeep.

5. The Tribunal, in order to determine compensation as well as liability, framed the following four (4) issues on the basis of the pleadings of both parties and taken up all the issues jointly for common disposal treating O.P. No.178 of 2003 as leading O.P.

“(1) Whether the accident is due to rash and

negligent driving

of the driver of the vehicle ?

- (2) Whether the petitioners sustained any injuries and disability and is entitled to claim compensation, if so, to what amount and from whom ?
- (3) Whether the petitioners are entitled for compensation as the legal heirs of the deceased, from which of the Respondent?
- (4) To what relief?"

6. During enquiry, the petitioners examined PWs.1 to 9, who include doctors (PWs.6 to 9), in all the five claims before the Tribunal and marked Exs.A-1 to A-51. On behalf of the insurers, no witnesses were examined, but copies of the insurance policy of the Jeep involved in the accident and its terms and conditions were marked as Exs.B-1 and B-2, respectively.

7. The Tribunal, having analyzed the evidence on record, held issue No.1 in favour of the petitioners by recording a finding that on account of rash and negligent driving of driver of the Jeep, the accident had occurred.

8(a) On issue Nos.2 and 3, in O.P. No.178 of 2003, the Tribunal has granted Rs.2,50,000/-, which consists of Rs.1,00,000/- towards medicines said to have incurred by the petitioners and Rs.1,50,000/- towards loss of

dependency, as against Rs.4,50,000/- claimed by the petitioners for the death of wife of petitioner No.1 and mother of petitioner Nos.2 to 4.

(b) In O.P. No.182 of 2003, which relates to death of a two (2) years old child, the Tribunal has granted Rs.75,000/- as against the claim of Rs.2,00,000/-.

(c) In O.P. No.180 of 2003, the Tribunal has granted Rs.90,000/- for the grievous injuries sustained by the petitioner as against the claim of Rs.3,00,000/-.

(d) In O.P. No.179 of 2003, the Tribunal has granted Rs.1,30,200/- as against the claim of Rs.4,00,000/-, where the deceased was a student of 19 years old.

9. Since the grounds are almost identical in all the claims, it would suffice, if referred to the grounds mentioned in M.A. C.M.A. No.1656 of 2005. Substantially, the grounds have been that the Tribunal has not properly appreciated the evidence on record including the evidence of medical officers examined as PWs.6 to 9, appropriate multipliers were not considered and went wrong in taking age of the mother of the deceased so far as the claim in O.P. No.179 of 2003 corresponding to M.A. C.M.A. No.1659 of 2005, and therefore, sought to grant the balance amount.

10. Heard Sri A. Ravinder, learned counsel for the petitioners (appellants) in all these appeals, and Sri A. Appadhara Reddy, learned counsel for respondent No.1, owner of the Jeep involved in the accident.

11. Despite service of notice, none appears for respondent Nos.2 and 3, insurers of the Jeep.

12. Perused the common order and decrees under challenge and the evidence on record, both, oral and documentary let in by the petitioners.

13(a) Turning to the request in M.A.C.M.A. No.1656 of 2005, the deceased was initially treated in Jaya Hospital and thereafter, in Yashoda Hospital and her death occurred on 29.11.2002. She was 48 years old at that time. Since no evidence was forthcoming to show that she was running a Kirana General Store, the Tribunal without resorting to the structural formula, granted Rs.1,00,000/- towards medical expenses and Rs.1,50,000/- towards loss of dependency, making a total of Rs.2,50,000/-. It is no doubt true, even assuming that the deceased was a house wife, the domestic services rendered by her to the family cannot be ignored and necessarily, by guess work, her income has to be assessed. When taken, her income at Rs.2,000/- per month which works out to Rs.24,000/- per annum towards

value of the services rendered by her, after deducting $\frac{1}{4}$ th i.e., Rs.6,000/- (Rs.24,000/- x $\frac{1}{4}$) therefrom towards her personal expenses, since the claimants are four in number, her contribution to the family towards value of her services would be Rs.18,000/- (Rs.24,000/- - Rs.6,000/-) per annum and since she was 48 years old at the time of her death, the appropriate multiplier for her age group is '13' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation** ^[1], and when applied the same, loss of dependency works out to Rs.2,34,000/- (Rs.18,000/- x 13). Besides the same, a sum of Rs.30,000/- is granted towards conventional sum. The amount of Rs.1,00,000/- granted by the Tribunal towards medical expenses is maintained.

(b) Thus, the petitioners are entitled to a total compensation of Rs.3,64,000/- (Rupees three lakhs sixty four thousand only) as against Rs.2,50,000 awarded by the Tribunal, and the same is accordingly awarded. The enhanced compensation shall be apportioned between the petitioners as directed by the Tribunal. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.2,50,000/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir**

Singh and others^[2], from the date of petition till realisation.

14. In M.A. C.M.A. No.1657 of 2005, the Tribunal has granted Rs.75,000/- towards death of a two years child. No adjudication is necessary in view of the decision of the Hon'ble Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and another**^[3], as such, enhanced the same to Rs.1,00,000/-. The enhanced compensation shall be apportioned between the petitioners equally as directed by the Tribunal. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.75,000/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2), from the date of petition till realisation.

15(a) In M.A. C.M.A. No.1658 of 2005, the Tribunal has granted Rs.90,000/- towards compensation aggregating the amount towards various heads. The petitioner filed documentary evidence which includes injury certificate, and also filed discharge bills and disability certificate, but the Tribunal has not taken accepted the disability at 30% as spoken to by PW.6. However, the evidence of PWs.6 and 7 would show that the petitioner has sustained fracture of left clavicle, left

pubic and also dental injury, which was also a fracture, since she lost a tooth and three teeth came out and for artificial teeth she said to have spent Rs.6,350/-. For all the injuries put together, the Tribunal has granted a sum of Rs.50,000/- including pain and suffering, Rs.25,000/- towards medical expenses and Rs.15,000/- towards disability, making a total of Rs.90,000/-.

(b) When looked at the evidence of PWs.6 and 7 and the petitioner, PW.6 being a surgeon (dental), and when kept in view the fracture of left clavicle and left pubic besides dental injury referred to hereinabove and the pain and suffering, the amount of Rs.50,000/- granted by the Tribunal appears to be on lower side. Certainly, the petitioner would have suffered great inconvenience on account of the injuries suffered by her for quite some time. Therefore, it would be reasonable to enhance the same to Rs.1,00,000/- and the same is accordingly granted. However, keeping in view, that the petitioner has incurred some amount towards extra-nourishment, attendant charges and transportation, the amount of Rs.25,000/- granted by the Tribunal towards medical expenses and attendant charges is enhanced to Rs.40,000/-. The Tribunal, though, referred to 30% disability, did not consider the same, but, granted Rs.15,000/-, which does not refer to construing permanent disability. Keeping in view the nature of injuries and the

sufferance the petitioner has undergone, the same is enhanced to Rs.30,000/-,

(c) Thus, the petitioner is entitled to a total compensation of Rs.1,70,000/- (Rupees one lakh seventy thousand only) as against Rs.90,000 awarded by the Tribunal, and the same is accordingly awarded. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.90,000/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

16(a) In M.A.C.M.A. No.1659 of 2005, the deceased was a student of 19 years old. Though, the claim was for Rs.4,00,000/-, the Tribunal has granted Rs.1,30,200/- taking notional income of the deceased at Rs.1,000/- per month and his contribution to the family at Rs.600/- per month which worked out to Rs.7,200/- per annum and applying multiplier '16', taking the age of the mother of the deceased as 40 years, arrived loss of dependency at Rs.1,15,200/- and Rs.15,000/- towards non-pecuniary damages, and, thus, awarded an amount of Rs.1,30,200/- towards compensation.

(b) It appears that the Tribunal, somehow, went wrong in taking notional income at Rs.1,000/- per month.

The deceased was a student of 19 years old and according to the petitioners, he was undertaking tuitions. Even otherwise, keeping in view that he was prosecuting graduation, though, not professional course, as there is no clear evidence on record, his notional income can be fixed at Rs.2,000/- per month which works out to Rs.24,000/- per annum, and when 50% thereof is deducted towards his personal expenses, the remainder of Rs.12,000/- can be viewed as contribution to his family. For the age group of the deceased, the appropriate multiplier is '18' in view of the decision in **Sarla Verma's Case** (Supra 1) and when applied the same, it works out to Rs.2,16,000/- (Rs.12,000/- x 18). The amount of Rs.15,000/- granted towards pecuniary damages is enhanced to Rs.30,000/-.

(c) Thus, the petitioners are entitled to a total compensation of Rs.2,46,000/- (Rupees two lakhs forty six thousand only) as against Rs.1,30,200 awarded by the Tribunal, and the same is accordingly awarded. The enhanced compensation shall be apportioned between the petitioners equally as directed by the Tribunal. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.1,30,200/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2), from the date of petition till realisation.

17. Accordingly, all the Civil Miscellaneous Appeals are allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

A. SHANKAR NARAYANA, J

April 13, 2016.

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35

[\[3\]](#) 2014 ACJ 526