

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4263 OF 2004

JUDGMENT:

Having got dissatisfied with the award of Rs.1,32,941/- as compensation by the order dated 25.06.2004 in M.O.P. No.12 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam (for short, 'the Tribunal') as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one R.Narayana Rao, who was the husband of appellant No.1 and father of appellant Nos.2 and 3, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of lorry bearing registration No.AP 5T 3009, respectively, are respondent Nos.1 to 3, respectively, and respondent No.4, which is insurer of TVS Champ moped bearing registration No.AP 31A 4041 on which the deceased was proceeding at the time of accident, is respondent No.4 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 21.06.2000 at about 3-30 p.m., the said R.Narayana Rao (deceased) was proceeding on TVS Champ moped bearing registration No.AP 31A 4041 to his workshop and when he reached Gollapalem, Visakhapatnam, respondent No.1 drove the lorry bearing registration No.AP 5T 3009 in a rash and negligent manner at high speed and dashed the TVS moped, due to which, the deceased died instantly. Other formalities were duly performed by the concerned police having registered the crime against the lorry driver. The petitioners claiming that the deceased was sole bread earner of their family, sought Rs.5,00,000/- as compensation from respondent Nos.1 to 3, who are driver, owner and insurer of the lorry.

5. Respondent Nos.1 and 2-driver and owner of the lorry remained *ex parte* before the Tribunal. Respondent No.3-insurer of the lorry opposed the claim raising various pleas. Respondent No.4-insurer of the TVS Champ moped also filed counter seeking dismissal of the claim petition against it, as the accident had occurred on account of negligent driving of respondent No.1.

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 eyewitness as P.W.2 and another as P.W.3 and marked Exs.A.1 to A.9 to substantiate their claim; whereas, on behalf of respondent Nos.3 and 4, no witnesses were examined and no documents were filed.

7. On appraisal of evidence let in by the parties, the Tribunal has tendered finding on issue No.1 that on account of rash and negligent driving of the driver of lorry, the accident had occurred occasioning the death of deceased. On issue Nos.2 and 3, the Tribunal having found the age of the deceased as 48 years, taken monthly income at Rs.2,000/- since no proof of income was forthcoming from the petitioners, deducted 1/3rd therefrom towards personal expenses and taken the remainder Rs.1,334/- per month or Rs.16,008/- per annum towards contribution of the deceased to the family and applying multiplier '7.68' as provided in the decision of this Court in **Bhagwandas v. Mohd. Arif**^[1], arrived the loss of dependency at Rs.1,22,941/-. Besides the same, the Tribunal also granted Rs.10,000/- towards consortium, and, thus, granted a total sum of Rs.1,32,941/- with interest at 9% per annum and apportioned the same among the petitioners, making respondent Nos.1 to 3

jointly and severally liable to pay the compensation, but however, dismissed the claim against respondent No.4.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence on record and without there being any basis, the Tribunal has fixed monthly income at Rs.2,000/-, though, the deceased was owner of engineering workshop earning Rs.10,000/- per month and that though there was no rebuttal evidence, and, therefore, sought to grant the balance amount.

9. Heard Sri Aravala Rama Rao, learned counsel for the appellants-petitioners. It is endorsed in the cause title of grounds of appeal that respondent Nos.1, 2 and 4 are not necessary parties in this appeal, as they remained *ex parte* before the Tribunal. No representation for respondent No.3-insurer of the offending vehicle.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners. As seen from the evidence on record, certainly, there is no definite evidence to show that the deceased was earning Rs.10,000/- per month. In that view of the matter, the Tribunal has taken Rs.2,000/- as the monthly income of the deceased and, therefore, the same does not warrant interference. However, multiplier applied by the Tribunal basing on the decision of this

Court in **Bhagwandas** case (supra¹) has to be modified in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[2]. Since the deceased was 48 years old, relevant multiplier is '13' in view of the said decision. When the same is applied to the multiplicand Rs.16,008/- taken by the Tribunal, loss of dependency works out to Rs.2,08,104/-. Since the future prospects in addition to loss of dependency at 30% is to be added in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[3], the petitioners are entitled to Rs.62,431/- additionally towards 30% of the loss of dependency. Thus, it works out Rs.2,70,535/-. Besides the same, the petitioners are also entitled to a conventional sum of Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**^[4].

11. Thus, the petitioners are entitled to a total sum of Rs.3,20,535/- (Rupees three lakh twenty thousand five hundred and thirty five) as against Rs.1,32,941/- 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 9% per annum and the same is maintained on the amount granted by the Tribunal, but interest at 7.5% per annum is

granted on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 3).

12. 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.

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

A. SHANKAR NARAYANA, J

3rd March, 2016

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[\[1\]](#) AIR 1988 AP 99

[\[2\]](#) (2009) 6 SCC 121

[\[3\]](#) 2013 ACJ 1403

[\[4\]](#) LAWS (SC) -2014-4-67