HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2058 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.1,80,000/- as compensation by the order dated 05.09.2006 in M.V.O.P. No.98 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short, 'the Tribunal') as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Armugam Vadayar, son of appellant Nos.1 and 2, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 and 2 herein, who are the parents of the said Armugam Vadayar, are petitioner Nos.1 and 2, while respondent Nos.1 and 2 herein, who are the owner and insurer of the accident vehicle, i.e., lorry bearing registration No.AP 03U 2595, are respondent Nos.1 and 2, respectively, 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 would show that on 31.07.2001 at about 4-00 p.m., the said Armugam Vadayar (deceased), working as cleaner in the lorry bearing registration No.AP 03U 2595, owned by respondent No.1, was proceeding from Chinthamani, Kolar District, Karnataka

State to Lucknow for transportation of goods and when it reached Adilabad-Nagar road at Pippalapoti, since its driver lost control over the same as he was driven it in a rash and negligent manner, it fell into a channel from a bridge, due to which, the said Armugam Vadayar sustained multiple injuries to his person, and he was shifted to Government Hospital, Adilabad, where he succumbed to injuries. The petitioners, stating that the deceased was earning Rs.4,000/- per month as a lorry cleaner, sought Rs.4,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal.

6. Respondent No.2-insurer opposed the claim.

7. The Tribunal, having framed two issues, examined petitioner No.1 as P.W.1 and marked Exs.A.1 to A.5 on behalf of the petitioners; and marked a xerox copy of the insurance policy as Ex.B.1 on behalf of respondent No.2. No witnesses were examined on behalf of respondent No.2-Insurance Company.

8. The Tribunal, on appraisal of evidence on record, held both the issues in favour of the petitioners. So far as determining the compensation amount is concerned, the Tribunal took the notional income of Rs.1,500/- per month or Rs.18,000/- per annum, deducted 1/3rd therefrom and taken his contribution to the family at Rs.12,000/-, applied multiplier '15' basing on the age of the younger parent, the

mother of the deceased, as 44 years and arrived at Rs.1,80,000/- towards loss of dependency and awarded the same with interest 7.5% per annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and ought to have taken the income at Rs.4,000/- per month and ought to have applied multiplier factor relevant to the age of the deceased.

10. Heard Sri T.C.Krishnan, learned counsel for the appellants-petitioners. No representation for respondent No.2-Insurance Company. Though, served with notice, none appears for respondent No.1-owner.

11. The finding recorded by the Tribunal that the deceased was working as a cleaner in the accident lorry would itself indicate that the deceased was pursuing the profession. The Minimum Wages Act, 1948, would show that cleaner was drawing the pay at Rs.1,437/- and VDA at Rs.434/- making a total of Rs.1,871/-. Even treating Rs.1,900/- as the monthly earnings of the deceased, since the deceased died in an unmarried status, 50% thereof is to be deducted towards personal living expenses. In which case, his contribution to the family would work out to Rs.950/- per month or Rs.11,400/-. Since he was 23 years old as per the postmortem report, multiplier factor ‘18’ is applicable in view of the decision of the Hon’ble Supreme Court in

Sarla Verma & others v. Delhi Transport Corporation and another[1]. In which case, the petitioners are entitled to Rs.2,05,200/- towards loss of dependency. The Tribunal has not granted any amount towards conventional heads. Therefore, a sum of Rs.5,000/- towards funeral expenses, Rs.10,000/- towards transport charges, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of love and affection, care and protection are awarded.

12. Thus, the petitioners are entitled to a total sum of Rs.2,50,200/- (Rupees two lakhs fifty thousand and two hundred) as against Rs.1,80,000/- 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 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2].

13. 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.

[1] (2009) 6 SCC 121
[2] 2013 ACJ 1403

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

A. SHANKAR NARAYANA, J

16th September, 2016

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