**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1446 OF 2009**

**JUDGMENT:**

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners, who are the legal representatives of K. Narsaiah, who died in a road accident, on the ground that the amount of Rs.1,30,000/- granted by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Adilabad (for short 'the Tribunal'), by the order, dated 04-01-2007, in O.P. No.180 of 2004, as compensation was very meager as against the claim of Rs.2,50,000/- laid under Sections166 and 140 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of Van bearing registration No.AP 1T 3620, respectively, are respondents as such in OP before the Tribunal.

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

4. The facts would reflect that on 29-04-2003, while the said K. Narsaiah was sleeping in front of his house near Bail Bazar area beside National Highway No.7, a Van bearing registration No.AP 1T 3620 coming from Nirmal side since driven in a rash and negligent

manner rammed into his house premises and ran over him, due to which, he sustained rupture of abdomen and died instantly.

i) The concerned police also registered a case in Crime No.69 of 2003 against the driver of the van. Seeking Rs.2,50,000/- towards compensation from respondent Nos.1 and 2, the legal representatives of the deceased laid the claim.

5. Respondent No.1, owner of the van, remained *ex parte*.

6. Respondent No.2 - Insurer opposed the claim stating that knowing full-well that it is a busy road, the deceased ought not to have slept outside the house, that too on road side and, thus, he contributed to the accident.

7. On the basis of the said pleadings, three issues were framed.

8. During inquiry, petitioner No.1 examined herself as PW.1 and an eye-witness as PW.2 and marked Exs.A-1 to A-5. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. On issue Nos.1 and 2, the Tribunal having favoured the petitioners, taken the age of the deceased as 40 years at the time of death, earnings Rs.1,000/- per month on labour work, deducted 1/3rd towards his living expenses and remaining 2/3rd taken towards contribution and, thus, arrived at Rs.1,20,000/- towards loss of

dependency, and further granted Rs.10,000/- towards all other heads including funeral expenses, making a total of Rs.1,30,000/- as compensation with interest at 7.5% per annum mulcting liability on respondent Nos.1 and 2 jointly and severally to pay the compensation.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal was not right in taking the contribution as Rs.1,000/- though, the deceased was working as Hamali and earning Rs.5,000/- per month. It is also stated that the Tribunal ought to have granted future earnings of the deceased and the amounts under different heads. Thus, sought to grant balance amount.

11. Heard Sri Lakkadi Dayakar Reddy, learned counsel for the appellants-petitioners, and Dr. Challa Srinivasa Reddy, learned Standing Counsel for respondent No.2-Insurance Company. Though, service was completed on respondent No.1, none appears for him.

12. The only short point involved in this case is, whether the compensation awarded by the Tribunal is just and adequate or whether the appellants-petitioners are entitled to enhancement of compensation, if so, to what amount?

13. The Tribunal in paragraph No.10, as to determination of compensation, somehow, opined that the monthly earnings of the deceased would not be more than Rs.1,000/- from labour work and, thus, computed annual income at Rs.12,000/-, and by deducting 1/3rd

therefrom, i.e., 4,000/- (Rs.12,000/- ÷ 3) towards personal expenses of the deceased and taking balance 2/3rd, i.e., Rs.8,000/- (Rs.12,000/- – Rs.4,000/-) towards contribution to the family, applied multiplier '15' taking the age of the deceased as 40 years and arrived at Rs.1,20,000/- (Rs.8,000/- x 15) towards loss of dependency. This apart, the Tribunal also granted Rs.10,000/- towards conventional sums put together, which itself would explain that the Tribunal was very conservative in awarding just and fair compensation.

14. The learned Standing Counsel for respondent No.2-Insurance Company contends that Hamalis would not be getting throughout the month and a sum of Rs.1,500/- per month can be taken on an average. Still, it appears to be on lower side. Hence, the monthly income at Rs.2,000/- is fixed, in which case, the annual income works out to Rs.24,000/-. So far as deduction is concerned, since there are five dependents on the deceased, the permissible deduction is 1/4th, as per the legal principle laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1], which works out to Rs.6,000/- (Rs.24,000/- ÷ 4), and when the same is deducted, the contribution of the deceased to the family would work out to Rs.18,000/- (Rs.24,000/- – Rs.6,000/-). Relevant multiplier is '15', since the age of the deceased was taken as 40 years on the date of death, which in accordance with multiplier factor applied by the Hon'ble Supreme

[1] (2009) 6 SCC 121

Court in **Sarla Verma's** case (supra 1) and when the said multiplier factor is applied, loss of dependency would work out to Rs.2,70,000/- (Rs.18,000/- x 15). This apart, the petitioners are entitled to future prospects at 30% from the loss of dependency basing on the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2], since the deceased was in the age group of persons between 40 and 50 years at the time of accident, which works out to Rs.81,000/- (Rs.2,70,000/- x 30%). Thus, the petitioners are totally entitled to Rs.3,51,000/-. This apart, the petitioners are also entitled to a conventional sum of Rs.50,000/-, which was approved by the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3].

15. Petitioners laid the claim for Rs.2,50,000/- only, but, certainly, they cannot be deprived of Rs.4,01,000/-, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's** case (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

---

[2] 2013 ACJ 1403
[3] LAWS (SC) -2014-4-67
[4] AIR 2003 SC 674
[5] 2012 ACJ 191 (SC)

16. Thus, the petitioners are entitled to a total sum of Rs.4,01,000/- (Rupees four lakh and one thousand) as against Rs.1,30,000/- granted by the Tribunal towards compensation and the same is accordingly granted. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today.

17. So far as the rate of interest is concerned, the Tribunal granted the same at 7% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

18. Accordingly, the instant appeal is allowed 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.

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

**A. SHANKAR NARAYANA, J**

2nd September, 2016

Mgr/siva