HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2656 OF 2005

JUDGMENT:

The appellants herein are the legal heirs of Murali Krishna, whose death occurred in a road accident, and they preferred the instant appeal feeling dissatisfied with the amount of Rs.2,70,520/- awarded as compensation, by the order dated 31.03.2005 in O.P.No.2719 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of the Ambassador car bearing registration No. AP 9L 929, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 20.11.2002 at about 6.30 p.m, while the said Murali Krishna (deceased) was returning home from Pulkampally on his scooter bearing

registration No. AP 7 F 8719, an Ambassador car bearing registration No.AP 9 L 929, driven in a rash and negligent manner at high speed, dashed the scooter, due to which, he sustained injuries and died instantly. Concerned police registered a case in Crime No.72 of 2002 against the driver of the accident vehicle. The petitioners, claiming that the deceased was drawing monthly salary of Rs.7,000/- as Telephone Mechanic in Telecommunications Department and they lost their lone bread winner of the family, sought a sum of Rs.10,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle, respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte.* Respondent No.2-insurer opposed the claim by raising the plea of contributory negligence on the part of the deceased and other pleas.

6. Basing on the said pleadings, the Tribunal framed three issues. During enquiry, petitioner No.1 examined herself as P.W.1, besides examining an eye-witness as P.W.2 and the concerned official from the Department, in which the deceased was working at the time of accident, as P.W.3 and marked Exs.A.1 to A.6, besides marking Exs.X1 to X3 through P.W.3, to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined, but the copy of the insurance policy was

marked as Ex.B.1 with consent.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioners. On issue No.2, as to determination of compensation, the Tribunal, by placing reliance on the decision of the Hon'ble Supreme Court in **Asha and others v. United India Insurance Company Limited and another**[1]**,** has taken the net salary of the deceased at Rs.1,946/- p.m. for the purpose of computation of loss of dependency, though mentioned in the earlier part of the order that the gross salary of the deceased was Rs.6,538/- in the month of October, 2002, and deducted 1/3rd there from towards personal expenses of the deceased, and, taking the age of the deceased as 39 years, applied multiplier '15' and arrived at Rs.2,33,520/- towards loss of dependency. Besides the said amount, the Tribunal has also granted Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.5,000/- towards transportation and Rs.2,000/- towards funeral expenses, and, thus, the Tribunal awarded a total sum of Rs.2,70,520 towards compensation with interest at 9% per annum from the date of petition till realization.

8. The aforesaid order is under challenge contending in the grounds that the Tribunal went wrong in taking the monthly salary of the deceased at Rs.1,946/-, out

of total salary of Rs.6,538/-, overlooking the fact that deduction of Rs.3,557/- was towards recovery of personal loan taken from the Society, Rs.280/- towards G.P.F and Rs.500/- towards L.I.C premium, which cannot be deducted while computing the net pay. It is also stated that the deceased had 19 more years of future service and promotion avenues and the Tribunal ought to have fixed the monthly salary of the deceased by doubling his actual salary in view of the decision of the Hon'ble Supreme Court in **General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas**[2] and, thus, sought to grant the balance amount.

9. Heard Sri Chandra Sekhar Reddy Gopireddy, learned counsel for the appellants, and Sri A.V.K.S. Prasad, learned Standing Counsel for respondent No.2-Insurance Company.

10. The appeal was dismissed for default against respondent No.1-owner of the accident vehicle, by order dated 05.01.2012, but it makes no difference in adjudicating the controversy, as respondent No.1 suffered decree by remaining *ex parte* before the Tribunal.

11. Perused the order under challenge and the evidence, both, oral and documentary, let in by the parties.

12. Learned counsel for the appellants would submit

that in view of the latest decisional law, except statutory deductions, no other deductions can be made. It is also his submission that no amount is awarded towards future prospects though, the deceased was a permanent employee as seen from the evidence of P.W.3 and the documentary evidence marked as Exs.X1 to X3. Concerning conventional amount, the petitioners are entitled to more than what was granted by the Tribunal in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3].

13. Learned Standing Counsel for the Insurance Company fairly concedes that the gross salary with statutory deductions has to be taken for the purpose of determining the compensation and also concerning future prospects in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma & others vs. Delhi Transport Corporation and another**[4] and **Rajesh and others v. Rajbir Singh and others**[5]

14. As seen from the evidence on record, Exs.X2 and X3 are the relevant documents marked through P.W.3. Ex.X2 relates to the last pay drawn by the deceased as on 20.11.2002, the date on which accident occurred, whereas, Ex.X3 relates to the salary drawn during the month of October, 2002. There is slight difference between the two,

but however, both the documents have been exhibited by P.W.3 and they were issued by the Accounts Officer, O/o. GMTD, Nalgonda. Since Ex.X2 gains precedence over Ex.X3, the basic pay i.e., Rs.4,870/- mentioned therein is taken into consideration and if the other particulars i.e., Rs.1,633/- towards D.A, Rs.230/- towards H.R.A and Rs.75/- towards T.A., as shown in Ex.X3, are added for the purpose of arriving at gross salary, it comes to Rs.6,808/- (4,870 + 1633 + 230 + 75) and as can be seen from the deductions shown in Ex.X3, a sum of Rs.80/- towards Professional Tax, Rs.150/- towards F.A and Rs.75/- towards Transport Allowance have to be deducted. When the same are deducted, it works out to Rs.6,503/-(Rs.6,808 – Rs.305/-) per month or Rs.78,036/- per annum and 1/3rd thereof would work out to Rs.26,012/-. When the same is deducted towards personal expenses, the contribution of the deceased to the family works out to Rs.52,024/-. The date of birth of the deceased is recorded as 04.02.1963 in Ex.X3. The accident occurred on 20.11.2002, and, thus, he was aged 39 years on the date of accident and, therefore, multiplier "15" is applicable as per the decision of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 4). When the said multiplier is applied, loss of dependency works out to Rs.7,80,360/- (Rs.52,024/- x 15). Since the deceased was working as Telecom Mechanic holding a permanent post, future prospects of 50% addition to be made on loss of dependency arrived at and the same works out to Rs.3,90,180/-. Thus, the total loss of dependency works out to Rs.11,70,540/- (Rs.7,80,360/- + Rs.3,90,180/-) Towards conventional amount, the petitioners are entitled to Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar's** case (supra 3). Thus, the petitioners are entitled to a total sum of Rs.12,20,540/- (Rupees twelve lakhs twenty thousand five hundred and forty) towards compensation, as against Rs.2,70,520/- granted by the Tribunal, and the same is accordingly granted.

15. The amount of Rs.12,20,540/-, arrived at towards determination of fair and adequate compensation, no doubt exceeds the claim of Rs.10,00,000/-, but in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[6]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[7] and **Rajesh's** (supra 5), there cannot be any prohibition in granting the said amount. However, the petitioners are directed to pay the Court fee on the excess amount of Rs.2,20,540/- granted by this Court within a period of three months from today before the Tribunal.

16. 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 of Rs.2,70,520/- granted by the

Tribunal, and on the enhanced amount, the petitioners are entitled to interest at 7.5% per annum from the date of petition till realization as per the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 5).

17. 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.

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

A. SHANKAR NARAYANA, J

09th February, 2016
v v

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[1] 2004 ACJ 448

[2] 1994 AIR 1631

[3] LAWS (SC) -2014-4-67

[4] (2009) 6 SCC 121

[5] 2013 ACJ 1403

[6] AIR 2003 SC 674

[7] 2012 ACJ 191 (SC)