

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2693 OF 2005

JUDGMENT:

Petitioners having got dissatisfied with the award of Rs.1,30,000/- as compensation for the death of one M. Shivamma by order and decree, dated 06.07.2005, in O.P.No.256 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Medak at Sanga Reddy, as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988, filed the instant appeal seeking enhancement of compensation.

2. The appellants are petitioners, whereas respondent Nos.1 and 2 are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

4. The facts in brief are that, on 06.02.2004, the deceased Smt. M. Shivamma went to a bore-well in Yedakulapally Village and while she was drawing water from the bore-

well, a tractor and trailer bearing registration Nos.APB 2682 and 2683 belonging to respondent No.1 coming from Village side driven in a rash and negligent manner hit her occasioning injuries to her. The petitioners, who are the mother-in-law, husband and son of the deceased, respectively, claiming that they are dependents on the deceased and that the deceased was 38 years old earning Rs.4,500/- per month by doing labour work and assisting the family in running their Barber business, sought a total sum of Rs.2,50,000/- as compensation against respondent Nos.1 and 2, who are the owner and insurer of the tractor and trailer, respectively.

5. Before the Tribunal, respondents filed their separate counters opposing the claim. Respondent No.1, taking the stand that the tractor was insured with respondent No.2 and the policy was in force as on the date of accident, sought to fasten the liability on respondent No.2.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, petitioner No.1 examined herself as PW.1 besides examining an eye-witness to the occurrence as PW.2 and marked Exs.A1 to A4 to substantiate the claim laid. On behalf of respondents, no oral evidence was let in, but a

copy of the Policy was marked as Ex.B1 on consent.

7. On issue No.1, the Tribunal, on appraisal of evidence on record, has tendered finding in favour of the petitioners. On issue No.2, the Tribunal, in the absence of any proof of income of the deceased, resorted to guess work in ascertaining the income of the deceased and fixed her earnings at Rs.1,200/- per month or Rs.14,400/- per annum and after deducting 1/3rd therefrom towards her personal expenses, taken the balance amount of Rs.9,600/- as contribution to the family, and by taking the age of the deceased as 45 years as mentioned in the Post-mortem Examination Report, marked as Ex.A3, while rejecting the stand of the petitioners that the deceased was 38 years old as on the date of accident, applied multiplier '13' and arrived at Rs.1,24,800/- towards loss of dependency. The Tribunal has also granted a sum of Rs.5,000/- towards loss of estate, but however, rounded off the compensation to a sum of Rs.1,30,000/- with interest at 7.5% per annum.

8. Seeking enhancement of compensation, petitioners preferred the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence on record; that instead of taking the age of the deceased as 38 years and applying multiplier '16', it has taken the age of the deceased as 45 years basing on the

Post-mortem Examination Report and applied multiplier '13'; that instead of awarding Rs.25,000/- towards loss of estate, it has awarded only Rs.5,000/-; and that the Tribunal ought to have granted interest at 18% per annum as against 9% per annum (wrongly stated in the grounds of appeal though the interest granted by the Tribunal was 7.5% per annum).

9. Heard Sri K. Raji Reddy, learned counsel for the appellants and Smt. P. Satya Manjula, learned counsel for respondent No.2 – insurer. Despite service of notice, none appears for respondent No.1.

10. Perused the order under challenge and the evidence, both, oral and documentary, on record.

11. Though the Tribunal has observed in the impugned order that by guess work and under Minimum Wages Act, the income of the deceased was taken at Rs.1,200/- per month, no further details are forthcoming as to what was the amount specified under the relevant Schedule. Therefore, the income of the deceased can be taken as Rs.1,500/- per month as against Rs.1,200/- fixed by the Tribunal and when $\frac{1}{3}^{\text{rd}}$ is deducted therefrom towards personal expenses of the deceased, it works out to Rs.12,000/- per annum. The age of the deceased taken by the Tribunal as 45 years is well reasoned as the Post-

mortem Examination Report was taken into consideration and there was no other evidence forthcoming to show that the age of the deceased was 38 years as on the date of accident. Therefore, taking the age of the deceased as 45 years, when multiplier '14' is applied in view of the decision of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1], the loss of dependency works out to Rs.1,68,000/-. The amount of Rs.5,000/- granted towards loss of estate is on lower side and hence, a sum of Rs.50,000/- is granted under all the heads. Thus, the petitioners are entitled to a total sum of Rs.2,18,000/-. The Tribunal has granted interest at 7.5% per annum and the same is confirmed. On the enhanced amount also interest at the same rate is granted in view of the decision of the Honourable Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

12. Thus, the instant appeal is allowed in part. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 11, 2016.

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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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[\[1\]](#) . 2009 (3) ALD 83 (SC)

[\[2\]](#) (2013) 9 SCC 54