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

**M.A.C.M.A. Nos.2516 AND 2519 OF 2009**
**AND**
**MACMAMP No.3511 OF 2009 in MACMANo.2519 OF 2009**

**COMMON JUDGMENT:**

Both these appeals are preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners in O.P. Nos.406 and 407 of 2004, challenging the order and decree, dated 28-06-2007 and 05-07-2007, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Adilabad, and the learned Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge (Fast Track Court), Adilabad, respectively.

2. The former appeal (MACMA No.2516 of 2009) arises out of the order and decree, dated 28-06-2007, in O.P. No.406 of 2004, passed by the Tribunal, whereby and where-under, a sum of Rs.2,07,000/- was awarded as compensation as against the claim of Rs.2,50,000/- laid under Section 166(1)(c) and 163-A of the Act for the death of one Rasamwar Chinnayya alias Ragondla Chinnaiah, husband of petitioner No.1, father of petitioner No.2 and son of petitioner No.3; whereas, the latter appeal (MACMA No.2519 of 2009) arises out of the order and decree, dated 05-07-2007, in O.P. No.407 of 2004, passed by the Tribunal, whereby and where-under, a sum of Rs.2,00,000/- was awarded as compensation which

was the claim amount sought by the petitioner under Section 166(1)(c) and 163-A of the Act for the death of one Lasmanna, husband of petitioner No.1 and father of petitioner Nos.2 and 3.

3. In both the appeals, the respective appellants are the respective petitioners in the claim petitions, while respondent Nos.1 and 2, who are owner and insurer of bus bearing registration No.AP 1T 4364, respectively, are respondents as such in the aforesaid OPs before the Tribunal.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.Ps.

5. Both the appeals arise out of one and the same accident but from two different orders and decrees and, therefore, taken up together for disposal by way of a common judgment.

6. The fact-situation is not disputed that led to the death of deceased in both the claim petitions.

7. The Tribunal, having framed four issues in both the claim petitions, examined the petitioner No.1 as PW.1 and marked Exs.A-1 to A-5 in the former claim petition, while petitioner No.1 was examined as PW.2 and an eye-witness to the occurrence as PW.2 and marked Exs.A-1 to A-6 in the latter appeal. On behalf of respondent No.2, which alone contested the claim, no witnesses were examined

and no documents were marked in both the appeals. Respondent No.1, owner of the bus, remained *ex parte*.

**MACMA No.2516 of 2009**

8. In the former appeal, the Tribunal having appreciated the evidence on record, discarded the pattadar passbook marked as Ex. A-5 on the mere premise that the entries therein would not reveal the nature of crop cultivated by the deceased and the actual earnings of the deceased, and thereby treated him as a daily wage labourer, fixed Rs.1500/- per month or Rs.18,000/- per annum and taking the age of the deceased as 35 years based on the entries in postmortem examination report marked as Ex.A-4, applied multiplier factor '16', having deducted 1/3$^{rd}$ towards personal living expenses of the deceased and arrived at Rs.1,92,000/- towards loss of dependency. The Tribunal has also awarded Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, making a total compensation of Rs.2,07,000/- with interest at 7.5% per annum placing reliance on the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v.Charlie and another**[1].

i) The Tribunal without assigning any reasons and without elaborately discussing the extents owned by the deceased referred in Ex.A-5, discarded it on the ground as mentioned in the above. Even otherwise, in the latter appeal, for the deceased person aged 60 years,

[1]. 2005 ACJ 1131

where no passbook at all was filed, the Tribunal taken the notional income at Rs.2,500/- without assigning proper reasons. For the person, who died in the same accident at the age of 32 years, the Tribunal ought not to have taken Rs.1,500/- per month and ought to have taken Rs.2,500/- as the monthly earnings.

ii) On that principle, earnings of the deceased is taken as Rs.2,500/- per month or Rs.30,000/- per annum. When 1/3rd towards personal living expenses is deducted, the annual contribution works out to Rs.20,000/-. Since the deceased was 35 years old, multiplier factor '16' is applicable as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[2]. When capitalized, it works out to Rs.3,20,000/- and, accordingly, the same is granted towards loss of dependency.

iii) Admittedly, the petitioners are also entitled to future prospects in view of the law declared in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[3] at 50% in addition, which has to be worked out from the loss of dependency arrived at, in which case, the petitioners are entitled to Rs.1,60,000/- additionally towards future prospects. Thus, the petitioners are entitled to Rs.4,80,000/- towards loss of dependency and future prospects together.

---
[2]. (2009) 6 Supreme Court Cases 121
[3]. 2013 ACJ 1403

iv) Towards conventional sums, an amount of Rs.50,000/- is awarded as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[4] as against Rs.15,000/- awarded by the Tribunal.

v) Thus, in all, the petitioners are entitled to Rs.5,30,000/- (Rupees five lakhs and thirty thousand) as compensation as against Rs.2,07,000/- granted by the Tribunal in O.P. No.406 of 2004.

**MACMA No.2519 of 2009 AND MACMAMP No.3511 OF 2009**

9. The Tribunal has granted entire amount of Rs.2,00,000/-, taking the age of the deceased as 60 years and the monthly earnings at Rs.2,500/- or annual earnings at Rs.30,000/-, deducted 1/3rd there-from, applied multiplier factor '8' as per the schedule appended to Section 163-A of the Act and arrived at Rs.1,60,000/- towards loss of dependency. Besides the same, Rs.15,000/- towards loss of consortium; Rs.15,000/- towards loss of estate; and Rs.10,000/- towards funeral and other incidental expenses, making a total of Rs.2,00,000/- and awarded the same rate of interest.

i) Though, there ought not to have been any grievance since the entire amount claimed in the claim petition has been awarded by the Tribunal still, the petitioners approached this Court by filing MACMAMP No.3511 of 2009 along with the appeal seeking

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

enhancement of compensation by way of amendment of the claim from Rs.2,00,000/- to Rs.3,50,000/-. The said petition has been coming up along with the present appeal. In view of the settled proposition that there cannot be any embargo to award amount exceeding the claim, in case on determination if the Tribunal or the Court arrives at a fair compensation, the petition deserves to be allowed and, accordingly, the same is allowed.

ii) The relevant multiplier is '9' as per the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 2), when annual contribution of Rs.20,000/- as worked by the Tribunal is capitalized with the said multiplier factor, it works out to Rs.1,80,000/- as against Rs.1,60,000/- awarded by the Tribunal. Since the deceased has attained 60 years by the date of accident, the petitioners are not entitled to any future prospects. However, towards conventional heads, a sum of Rs.50,000/- is granted as against Rs.40,000/- granted by the Tribunal as mentioned in the above.

iii) Thus, the petitioners are entitled to Rs.2,30,000/- (Rupees two lakhs and thirty thousand) as against the claim of Rs.2,00,000/- awarded by the Tribunal in O.P. No.407 of 2004.

10. No doubt, the petitioners in the former appeal laid the claim for Rs.2,50,000/- only, while the petitioners in the latter appeal laid the claim for Rs.2,00,000/-, but, certainly, they cannot be deprived of

the amounts of Rs.5,30,000/- and Rs.2,30,000/- respectively, though, exceed the claims made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[5]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[6] and **Rajesh's** Case (Supra 3). The petitioners in both the claim petitions 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.

i) The enhanced compensation in these appeals shall be apportioned proportionately as apportioned by the Tribunal.

11. Even, the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 3) and, therefore, the same is maintained on enhanced amounts also.

12. Accordingly, both the appeals are allowed, and the order and decree passed by the Tribunal in both the claim petitions are modified enhancing the compensation amounts to the extent as indicated in the above. Similarly, MACMAMP No.3511 of 2009 filed by the petitioners in MACMA No.2519 of 2009 seeking enhancement of claim amount is also allowed.

---

[5] AIR 2003 SC 674
[6] 2012 ACJ 191 (SC)

As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

**A. SHANKAR NARAYANA, J**

**November 24, 2016.**
Mgr