HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1760 OF 2005

JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s. United India Insurance Company Limited challenging the order and decree, dated 07-07-2004, in O.P. No.117 of 1999, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - Additional District Judge, Hindupur, whereby and where-under, a sum of Rs.4,90,000/- was awarded as compensation as against the request for grant of Rs.2,00,000/- towards compensation under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

2. The appellant and respondent No.12 herein, who are insurer and insured of Van bearing registration No.AP 02T 8248, are respondent Nos.1 and 2, respectively, in O.P. No.117 of 1999, while respondent Nos.1 to 6 are petitioners and respondent Nos.7 to 11 are respondent Nos.3 to 7.

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

4. The facts, in brief, are that one Allabakash, who

is the deceased herein, was working as Revenue Inspector in the office of Mandal Revenue Oficer, Bukkapatnam, Anantapur District at the relevant time. On 09-12-1998, he was travelling from Bukkapatnam to Kothacheruvu in a Jeep bearing registration No.AP 02A 4951 to visit Penugonda on his official duty, during which time, a Van bearing registration No.AP 02T 8248 coming in opposite direction at high speed in a rash and negligent manner, hit the jeep, due to which, the said Allabakash sustained serious injuries and while he was being shifted to Government Hospital, Anantapur, he succumbed to injuries. Therefore, the petitioners laid a claim for Rs.2,00,000/- against respondent No.1, owner of the van, and respondent No.2, its insurer.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 - insurer contested the claim raising usual pleas, contending feebly that the driver of the vehicle was not holding valid license to drive the vehicle at the relevant time.

7. Respondent No.3, wife of the deceased, along with her children through Allabakash, sought to grant compensation basing on the emoluments he had drawn and, thus, sought the payment of compensation to them.

8. The Tribunal has framed four issues including the issue touching whether the petitioners are legal heirs and dependants on the deceased as the petitioners are blood relations, who do not constitute the family of the deceased.

9. During inquiry, PWs.1 and 2 were examined and Exs.A-1 to A-5 were marked. On behalf of respondent Nos.3 to 7 as one set RW.1 was examined and Exs.B-1 and B-2 were marked, and respondent No.2 – insurer, as the other set, reported no evidence to lead as could be seen from the order.

10. The Tribunal, in determining compensation, basing on Ex.B-2, salary certificate, taken the total emoluments of the deceased as Rs.7,499/-, and after deducting 1/3rd there-from and opined that the family contribution would have been Rs.5,000/- per month. The Tribunal, further observing that respondent No.3 was given employment and even getting some pension on account of death of her husband, reduced Rs.1000/- from out of Rs.5,000/- and arrived the contribution to the family at Rs.4,000/- per month or annual contribution at Rs.48,000/-. Applying multiplier '10' based on the judgment of this Court in **Bhagwandas v. Mohd. Arif**[1]

arrived the compensation at Rs.4,80,000/-. The Tribunal also awarded a sum of Rs.10,000/- towards loss of consortium and, thus, granted a total sum of Rs.4,90,000/- as compensation and apportioned the amounts between petitioner Nos.1 and 2, who are parents of the deceased at Rs.40,000/- each, and since petitioner No.1 died during the pendency of O.P. his share of Rs.40,000/- was apportioned equally among petitioner Nos.2 to 6 at Rs.8,000/- each and from the balance of Rs.4,10,000/- apportioned Rs.2,10,000/- towards the share of respondent No.3 and Rs.50,000/- each to respondent Nos.4 to 7. The Tribunal has granted interest at 6% per annum from the date of petition till realization.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by the insurer on the main ground that the Tribunal ought not to have awarded Rs.4,90,000/- since the very claim itself was for Rs.2,00,000/- with further ground that the deductions ought to have taken into consideration before arriving at the income for the purpose of applying multiplier.

12. Heard Sri E. Venugopal Reddy, learned counsel for the appellant/respondent No.2 - Insurer, and Sri K. Maheswara Rao, learned counsel for respondent Nos. 3 to 7. Though the other respondents were served with notice, none appears.

13. The learned counsel for the appellant would fairly submit that in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[2] and **Rajesh and others v. Rajbir Singh and others**[3], even if the compensation is determined basing on the annual earnings fixed by the Tribunal, it would be nearer to the compensation or slightly more than the compensation awarded by the Tribunal. It is true, the Tribunal has applied multiplier '10' and taken the annual contribution at Rs.48,000/- to the family and, in fact, gross salary with statutory deductions has to be taken for the purpose of determining compensation and the multiplier would be '14'. Since no cross-objection is preferred by the petitioners, the amount of Rs.4,90,000/- granted by the Tribunal with interest at 6% per annum though, it is on lower side, still, maintained. In the said circumstances, the appeal is liable to be dismissed.

14. Accordingly, the appeal is dismissed. No order as to costs.

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

A. SHANKAR NARAYANA, J

June 22, 2016.
Mgr

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[1]. 1987 (2) ALT 137

[2]. (2009) 6 Supreme Court Cases 121

[3]. 2013 ACJ 1403