

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.862 OF 2009

JUDGMENT:

The United India Insurance Company Limited, Vijayawada - respondent No.2 in M.V.O.P. No.1185 of 2006, preferred the instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved of the award of Rs.6,09,040/- as compensation, as against the claim of Rs.8,50,000/- laid under Section 166 of the Motor Vehicles Act 1988 (for short 'the Act'), through the order and decree therein, dated 07.05.2008, by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Khammam (for short 'Tribunal'), on the ground that the compensation granted is excessive, arbitrary and was determined without following the settled legal principles.

2. Appellant and respondent No.4 herein, who are owner and insurer, respectively, of the lorry bearing No.AP-16-X-1328 that involved in the accident, are respondent Nos.1 and 2 in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are wife and children, respectively, of one Sambasiva Rao, who died in the accident, are petitioners (claimants).

3. For the sake of convenience, the parties are

hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, briefly stated, are that on 25.03.2006, while one Sambasiva Rao was proceeding on Temple work, as part of his duty, to Yerrupalem on his Suzuki Motorcycle bearing No.AP-5-R-8355, at about 11.30 a.m., near Banjara village on Jamalapuram-Yerrupalem R&B Road, a lorry bearing No.AP-16-X-1328 driven in a rash and negligent manner at high speed, came in the opposite direction, and hit the motorcycle, due to which, he sustained head injury and died instantly. The police concerned registered a case against the driver of the lorry and investigated into. The petitioners, on the ground that they are dependants on the deceased, who was 50 years old at the relevant time and working as Jamedar (Senior Attender) in Sri Venkateswara Swamy Vari Devasthanam, Jamalapuram, and getting a salary of Rs.8,463/- per month, sought an amount of Rs.8,50,000/- as compensation.

5. Before the Tribunal, respondent No.1, owner of the lorry that involved in the accident, remained *ex parte*.

6. Respondent No.2, insurer of the lorry, opposed the claim, but, no specific plea with regard to violation of terms and conditions of the insurance policy was taken.

7. Based on the pleadings, the Tribunal framed three (3) issues in order to fix liability in taking place of the accident and to determine compensation to which the petitioners are entitled.

8. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A-1 to A-6 were marked. On behalf of the insurer, except marking insurance policy of the lorry that involved in the accident as Ex.B-1, no witness was examined.

9. On issue No.1, the Tribunal recorded a finding favouring the petitioners. On issue No.2, based on the entries in Ex.A-6 which reflect that the deceased was drawing a basic pay of Rs.7,200/- besides Rs.643/- towards Dearness Allowance and Rs.720/- towards House Rent Allowance, after deducting Rs.1,000/- from his monthly income, taken net salary of the deceased as Rs.7,463/- per month and Rs.89,566/- per annum and after deducting $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses of the deceased, taking the remainder i.e., Rs.59,704/- towards his contribution to the family, applying multiplier '10' treating the deceased as 50 years old as per the postmortem report under Ex.A-3, arrived at Rs.5,97,040/- (Rs.59,704/- x 10) towards loss of dependency, besides granting Rs.10,000/- towards loss of consortium to petitioner No.1, wife of the deceased, and Rs.2,000/- towards funeral expenses, and, thus, granted a

sum of Rs.6,09,040/- towards total compensation with interest at 7.5% per annum apportioning the compensation among the petitioners.

10. The aforesaid order is under challenge in the instant appeal preferred by the insurer contending in the grounds of appeal that the Tribunal ought to have applied multiplier '7.68' as laid down by this Court in **Bhagwandas v. Md. Arif**^[1], which has been the only ground agitated in the instant appeal and, thus, sought to set aside the order and decree under challenge.

11. Heard Sri Somanchi Venkateswarlu, learned counsel for the insurer (appellant), and Sri S.R. Cherukuri, learned counsel for the petitioners.

12. The absence of respondent No.4, owner of the lorry that involved in the accident, makes no difference in deciding the controversy in the instant appeal as she remained *ex parte* before the Tribunal and suffered the decree.

13. A perusal of the order and decree under challenge and the evidence on record, more particularly, contents of Ex.A-6, salary certificate of the deceased, clearly show that the Tribunal did not commit any wrong in fixing monthly income of the deceased at Rs.7,463/- and arriving at Rs.89,566/- towards annual income. In fact, the

multiplier applied by the Tribunal is incorrect, since for a person aged 50 years, the relevant multiplier is '13' as held by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[2] and also as provided in Schedule - II to Section 163-A of the Act. Further, even the amounts awarded towards loss of consortium and funeral expenses are also on lower side and no amount at all was awarded towards loss of estate. Future prospects were also not at all considered.

14. Therefore, viewed under the circumstances referred above, the amount of Rs.6,09,040/- arrived at by the Tribunal towards compensation, certainly, does not suffer from any legal infirmity. Even the interest granted by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**^[3].

15. Therefore, the Civil Miscellaneous Appeal is dismissed for want of merit confirming the order and decree under challenge in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 26, 2016.

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- 1. 1987(2) ALT 137**
 - 1. (2009) 6 SCC 121
 - 2. 2013ACJ1403 = 2013(4)ALT35