HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.Nos.641 of 2007 and 1354, 719 & 2165 of 2009

COMMON JUDGMENT :

All these Civil Miscellaneous Appeals, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), are preferred by the appellants – petitioners, aggrieved by the common order and decrees dated 02.05.2006, rendered in O.P.Nos.2635, 2636, 2637 and 2638 of 2004, respectively, (along with O.P.No.2639 of 2004), by the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad (for brevity "the Tribunal"), whereby and whereunder a compensation of Rs.1,30,000/-, Rs.1,81,000/-, Rs.3,08,000/- and Rs.1,61,000/-, respectively, was awarded by the Tribunal with interest @ 7.5% per annum, as against the claims of Rs.4,00,000/- each in O.P.Nos.2635, 2636 and 2637 of 2004, and Rs.3,50,000/- in O.P.No.2638 of 2004, made under Section 163-A of the Act, for the death of the deceased therein in a motor accident that occurred on 20.06.2004 at about 12.00 noon, near Mahaboobnagar 'X' Roads, on the ground that the amount of compensation determined by the Tribunal is unfair and inadequate, and hence, sought for enhancement of compensation.

2. In all these appeals, the appellants are petitioners, respondent No.1 – owner of the offending lorry bearing No.AP 16V 4655 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.Nos.2635, 2636, 2637 and 2638 of 2004, respectively. For the sake of convenience, the parties are referred to as they are arrayed in the relevant O.Ps., before the Tribunal.

3. There have been five deaths in the aforesaid accident that took place on 20.06.2004. The appeal in M.A.C.M.A.No.1287 of 2009 preferred against the common order and decree dated 02.05.2006, passed in O.P.No.2639 of 2004, relating to the death of 9 years old female child, which was tried along with the aforesaid O.Ps., was settled before the Lok Adalat organised by the High Court Legal Services Committee.

4. Inasmuch as the manner in which the accident had occurred and the liability of the 2nd respondent – insurer to compensate the petitioners in the respective claim petitions by way of indemnifying the 1st respondent – owner, the ages of the deceased in the respective claim petitions, their legal representatives, who are the claim petitioners, are not in dispute, there is no need to advert to the fact-situation, in detail.

5. Heard Sri V. Atchutha Ram, learned counsel for the appellants – petitioners in all these appeals, and Sri K. Sitaram, learned Standing Counsel for the 2nd respondent – insurer in M.A.C.M.A.No.641 of 2007, M.A.C.M.A.Nos.1354 and 2165 of 2009; and Sri G. Visweswara Reddy, learned Standing Counsel for the very same 2nd respondent – insurer in M.A.C.M.A.No.719 of 2009. Though, the 1st respondent – owner in all these appeals was served, none appears for him. In fact, he remained *exparte* before the Tribunal also.

6. During the course of arguments, learned Standing Counsel for the 2nd respondent – insurer accedes to the fixation of earnings of the deceased concerned at Rs.3,000/- per month or towards the value of the domestic services rendered by them in M.A.C.M.A.No.641 of 2007 and M.A.C.M.A.Nos.1354 and 2165 of 2009, in view of the decision of a Division Bench of this Court in **Oriental Fire and General Insurance Company Limited v. Dr. C. Chandra Obula Reddy**[1] and the decision of the Hon'ble Supreme Court in **Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar**[2]. So far as M.A.C.M.A.No.719 of 2009 is concerned, the Tribunal fixed the earnings of the deceased therein at Rs.4,000/- per month or Rs.48,000/- per annum, but, somehow, took the average between Rs.24,000/- and Rs.36,000/-. In elaboration, though, the Tribunal, initially,

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[1] 2006 (1) ACJ 285
[2] 2015 ACJ 708

fixed the monthly earnings of the deceased at Rs.4,000/-, who was a driver, whose wife also died in the very same accident, being the deceased in M.A.C.M.A.No.641 of 2007, admittedly, the 2nd respondent – insurer has not preferred any appeal.

7. Turning to the conventional sums awarded by the Tribunal, they are uniform, viz., the Tribunal awarded Rs.5,000/- towards funeral expenses, Rs.2,000/- towards transport charges to the Hospital, and Rs.1,000/- towards damage to the clothing and articles, in each of the claim petitions. This apart, the Tribunal has deduced 1/3rd towards personal living expenses of the deceased in the respective claim petitions, as per the law then holding the field, irrespective of the number of dependents on the deceased. Further, though, the multiplier factor adopted by the Tribunal was from the II Schedule to Section 163-A of the Act, the Tribunal, instead of taking the multiplier factor, as provided for the age group, somehow, dissected it depending on the ages of the deceased in the age group and applied the relevant multiplier factor in decimals, even. However, since the claims have been laid under Section 166 of the Act, multiplier factors provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport**

Corporation and another[3] would apply. Thus, the modifications have to be made, as indicated above.

M.A.C.M.A.No.641 of 2007 :

8. In this appeal, which relates to O.P.No.2635 of 2004, the Tribunal has taken the age of the deceased – Smt. Bijan Bee, in the age group of 45 years to 50 years, on the date of her death, and by taking the notional income of the deceased as Rs.15,000/-, though, the claimants, who are 4 sons and 2 daughters, set up a stand that the deceased was a bangles maker, the Tribunal did not agree with the said stand. However, it cannot be disputed that the deceased, being a house-wife, as recorded in Ex.A.6 – Inquest Report, the Tribunal has taken her earnings or towards the value of the domestic services rendered by her at Rs.3,000/- per month or Rs.36,000/- per annum, and since the dependents are 6, in number, 1/4th deduction is permissible. In other words, 1/4th of the annual income i.e., Rs.9,000/- is deducted towards personal living expenses of the deceased, and the reminder Rs.27,000/- would be the contribution of the deceased to the family. Since the deceased falls within the age group of 46 to 50 years, as per the table formulated in **Sarla Verma's** case (supra 3), the relevant multiplier is '13' and when the same is applied, the loss of dependency or the loss of the value of domestic services rendered by the deceased would workout to

[3] (2009) 6 Supreme Court Cases 121

Rs.3,51,000/- (Rs.27,000/- x 13 = Rs.3,51,000/-). This apart, the petitioners are also entitled to the other sums of Rs.5,000/- towards funeral expenses, Rs.2,000/- towards transport charges to the Hospital, and Rs.1,000/- towards damage to the clothing and articles, awarded by the Tribunal. Thus, the petitioners are entitled to a total compensation of Rs.3,59,000/- (Rs.3,51,000/- + Rs.5,000/- + Rs.2,000/- + Rs.1,000/- = Rs.3,59,000/-), as against the compensation of Rs.1,30,000/- awarded by the Tribunal.

9. Further, the Tribunal has awarded interest @ 7.5% per annum. Since the said rate of interest has been adopted by the Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4], the same is maintained on the enhanced amount of Rs.2,29,000/- (Rs.3,59,000/- - Rs.1,30,000/- = Rs.2,29,000/-) also.

10. Accordingly, this Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.1,30,000/- to Rs.3,59,000/- (Rupees three lakhs fifty nine thousand only) with interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

<u>M.A.C.M.A.No.1354 of 2009 :</u>

11. In this appeal, which relates to O.P.No.2636 of 2004, the Tribunal has taken the age of the deceased – Asia Begum

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[4] 2013ACJ1403 = 2013(4)ALT35

as 30 years, as on the date of her death, and without there being any proof that she was doing any business, the Tribunal has taken her earnings or value of the domestic services rendered by her at Rs.3,000/- per month or Rs.36,000/- per annum. The said finding is maintained. After deducting 1/3rd therefrom i.e., Rs.12,000/- towards personal living expenses of the deceased, the reminder Rs.24,000/- would be the contribution to the family. Since the deceased was aged 30 years, as on the date of her death, the relevant multiplier factor '17' is applicable as per the decision in **Sarla Verma's** case (supra 3) and when the same is applied, the loss of dependency or the loss of value of the domestic services rendered by the deceased would workout to Rs.4,08,000/- (Rs.24,000/- x 17 = Rs.4,08,000/-). This apart, the petitioners are also entitled to the other sums of Rs.5,000/- towards funeral expenses, Rs.2,000/- towards transport charges to the Hospital, and Rs.1,000/- towards damage to the clothing and articles, granted by the Tribunal.

12. Further, the Tribunal has not granted any amount towards loss of consortium to the 1st petitioner, who is the husband of the deceased. Hence, the 1st petitioner is entitled to a sum of Rs.15,000/- towards loss of consortium. Thus, the petitioners are entitled to a total compensation of Rs.4,31,000/- (Rs.4,08,000/- + Rs.5,000/- + Rs.2,000/- +

Rs.1,000/- + Rs.15,000/- = Rs.4,31,000/-), as against the compensation of Rs.1,81,000/- awarded by the Tribunal.

13. Further, the Tribunal has awarded interest @ 7.5% per annum. Since the said rate of interest has been adopted by the Supreme Court in **Rajesh's** case (supra 4), the same is maintained on the enhanced amount of Rs.2,50,000/- (Rs.4,31,000/- - Rs.1,81,000/- = Rs.2,50,000/-) also.

14. Accordingly, this Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs.1,81,000/- to Rs.4,31,000/- (Rupees four lakhs thirty one thousand only) with interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

<u>M.A.C.M.A.No.719 of 2009 :</u>

15. In this appeal, which relates to O.P.No.2637 of 2004, the Tribunal has taken the earnings of the deceased – Ahmed Hussain at Rs.4,000/- per month or Rs.48,000/- per annum. The said finding is maintained. Since the dependents are 6 in number, 1/4th deduction is permissible and, when 1/4th of the annual income i.e., Rs.12,000/- is deducted towards personal living expenses of the deceased, the reminder Rs.36,000/- would be the contribution to the family. Since the age of the deceased is shown as 50 years, as on the date of his death, as per the table formulated in **Sarla Verma's** case (supra 3), the relevant multiplier is '13', and when the

same is applied, the loss of dependency would workout to Rs.4,68,000/-. Since the age of the deceased is taken as 50 years, in view of the law laid down by the Hon'ble Supreme Court in **Sarla Verma's** case (supra 3), the petitioners are additionally entitled to 30% of loss of dependency, which worksout to Rs.1,40,400/- towards loss of future prospects. Thus, the petitioners are entitled to a sum of Rs.6,08,400/- towards loss of dependency, including future prospects. This apart, the petitioners are also entitled to the conventional sum of Rs.50,000/-, as against the sums of Rs.5,000/- towards funeral expenses, Rs.2,000/- towards transport charges to the Hospital, and Rs.1,000/- towards damage to the clothing and articles, which were granted by the Tribunal. Thus, the petitioners are entitled to a total compensation of Rs.6,58,400/- (Rs.6,08,400/- + Rs.50,000/- = Rs.6,58,400/-), as against the compensation of Rs.3,08,000/- awarded by the Tribunal.

16. Further, the Tribunal has awarded interest @ 7.5% per annum. Since the said rate of interest has been adopted by the Supreme Court in **Rajesh's** case (supra 4), the same is maintained on the enhanced amount of Rs.3,50,400/- (Rs.6,58,400/- - Rs.3,08,000/- = Rs.3,50,400/-) also.

17. Accordingly, this Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs.3,08,000/- to Rs.6,58,400/- (Rupees six lakhs fifty eight thousand four

hundred only) with interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

M.A.C.M.A.No.2165 of 2009 :

18. In this appeal, which relates to O.P.No.2638 of 2004, the Tribunal has taken the age of the deceased – Smt. Kulsum Begum as 38 years, as on the date of her death, and by treating her earnings or towards value of the domestic services rendered by her at Rs.3,000/- per month or Rs.36,000/- per annum, and since the dependents are 4, in number, 1/4th deduction is permissible, and after deducting 1/4th of annual income i.e., Rs.9,000/- towards personal living expenses of the deceased, the reminder Rs.27,000/- would be the contribution to the family. Since the deceased was aged 38 years, the relevant multiplier is '15' and when the same is applied, the loss of dependency or the loss of the value of the domestic services rendered by her would workout to Rs.4,05,000/- (Rs.27,000/- x 15 = Rs.4,05,000/-). This apart, the petitioners are also entitled to other amounts of Rs.5,000/- towards funeral expenses, Rs.2,000/- towards transport charges to the Hospital, and Rs.1,000/- towards damage to the clothing and articles, which were granted by the Tribunal. Further, the Tribunal has not awarded any amount towards loss of consortium to the 1st petitioner, who is the husband of the deceased. Hence, the 1st petitioner is entitled to a sum of Rs.15,000/- towards that head. Thus, the

petitioners are entitled to a total compensation of Rs.4,28,000/- (Rs.4,05,000/- + Rs.5,000/- + Rs.2,000/- + Rs.1,000/- + Rs.15,000/- = Rs.4,28,000/-), as against the compensation of Rs.1,61,000/- awarded by the Tribunal.

19. Further, the Tribunal has awarded interest @ 7.5% per annum. Since the said rate of interest has been adopted by the Supreme Court in **Rajesh's** case (supra 4), the same is maintained on the enhanced amount of Rs.2,67,000/- (Rs.4,28,000/- - Rs.1,61,000/- = Rs.2,67,000/-) also.

20. Accordingly, this Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs.1,61,000/- to Rs.4,28,000/- (Rupees four lakhs twenty eight thousand only) with interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

21. In M.A.C.M.A.Nos.1354, 719 and 2165 of 2009, the petitioners therein laid claim for Rs.4,00,000/-, Rs.4,00,000/- and Rs.3,50,000/-, respectively. Though, the compensation now determined exceeds their claim, certainly, they cannot be deprived of excess amount of compensation, 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 4), wherein it

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

was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law, irrespective of the claim made by them.

22. However, the petitioners, in the respective appeals, are directed to pay Court fee on excess amount of compensation than what was claimed by them, within three months from today.

23. As a sequel, miscellaneous applications pending, if any, in these appeals shall stand closed.

JUSTICE A. SHANKAR NARAYANA

08.09.2016.
Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.Nos.641 of 2007 and 1354, 719 & 2165 of 2009

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