THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2100 of 2009

JUDGMENT:

The petitioners, being the legal representatives and heirs of one Darsi Galaiah, whose death occurred on 20.06.2005 at the age of 52 years in a road accident, preferred the instant appeal aggrieved by the order and decree, dated 17.12.2007, in M.V.O.P.No.885 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'), on the ground that the award of Rs.58,500/- as against the claim of Rs.6,00,000/- laid by them under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') is very meagre and, hence, sought to grant the balance amount.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2, who are owner and the insurer of the auto bearing registration No.AP 7 U 6769, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

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

4. Heard Sri B.Parameswara Rao, learned counsel for the appellants, and Sri R.K.Suri, learned counsel for the National Insurance Company Limited – respondent No.1. Respondent No.1, owner of the auto, is not a necessary party as endorsed by the appellants in the cause title of the appeal.

5. The Tribunal has taken the national income of the deceased at Rs.15,000/- per annum as provided in the Second Schedule to Section 163A of the Act and, by deducting 1/3rd there from towards personal expenses, taken the remaining amount i.e., Rs.10,000/- per annum as the contribution of the deceased to the family. Taking the age of the deceased as 55 years, the Tribunal applied multiplier '11' and arrived at Rs.1,10,000/- (10,000 x 11) towards loss of dependency. Further, the Tribunal awarded Rs.5,000/- towards consortium to the 1st petitioner and Rs.2,000/- towards funeral expenses, making a total compensation of Rs.1,17,000/-, but, since it recorded a finding on issue No.1 that there has been contributory negligence on the part of the drivers of both the vehicles, apportioned the liability equally at 50% each, and, thus, awarded Rs.58,500/- with interest at 7.5% per annum to petitioner No.1 only, while dismissing the claim of petitioner Nos.2 to 5.

6. Learned counsel for the appellants would submit that in view of the decision of the Hon'ble Supreme Court in **Kishan Gopal**

and another v. Lala and others[1]**,** the income of the deceased can be taken at Rs.30,000/- per annum as against Rs.15,000/- per annum taken by the Tribunal, whereas learned counsel for respondent No.2 would support the order under challenge.

7. Perused the order under challenge and evidence let in by the parties.

8. Treating the annual income of the deceased at Rs.30,000/- in view of the decision relied on by the learned counsel for the appellants, and by deducting 1/4th there from towards personal expenses as per the decision in **Sarla Verma & others vs. Delhi Transport Corporation and another**[2]**,** the remainder i.e., Rs.22,500/-(30,000 x ¼ = 7,500; 30,000 – 7,500) is taken as the contribution of the deceased to the family. When multiplier '11' is applied to Rs.22,500/- as per the decision in **Sarla Verma**'s case, the loss of dependency works out to Rs.2,47,500/-. Petitioner No.1 is also entitled to Rs.50,000/- towards conventional sum in view of the decision of the Apex Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3]**.** However, out of this total amount of Rs.2,97,500/- (Rs.2,47,500 + 50,000), 50% has to be deducted in view of the contributory negligence, which finding recorded by the

[1] (2014) 1 SCC 244
[2] (2009) 6 SCC 121
[3] LAWS (SC) -2014-4-67

Tribunal is maintained as the same is based on appreciation of evidence.

9. Thus, petitioner No.1 is entitled to a total compensation of Rs.1,48,750/- (Rs.2,97,500 x 50%), as against Rs.58,500/- granted by the Tribunal, and the same is, accordingly, granted, while maintaining the dismissal of the claim of petitioner Nos.2 to 5 and interest at 7.5% per annum, as ordered by the Tribunal, on the enhanced amount also.

10. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

JUSTICE A.SHANKAR NARAYANA

17.09.2016
v v