

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.3997 of 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners in O.P.No.560 of 2008 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District and Sessions Judge, Markapur, seeking to enhance the compensation as the amount of Rs.2,27,900/- awarded towards compensation is meagre.

2. The fact-situation in the instant case is not in dispute between the parties.

3. Heard Sri N. Krishnamurthy, learned counsel for the appellants and Sri B. Devanand, learned Standing Counsel for the second respondent.

4. Though, service was completed on the first respondent, none appears for him.

5. Perused the order under appeal and the material and evidence available on record.

6. It is clear from the post mortem examination report - Ex.A.3, that the deceased was working as a hotel employee as

recorded in column No.2 thereof. The age of the deceased was fixed as 48 years. The Tribunal took the monthly earnings of the deceased at Rs.2,100/-, which comes to Rs.25,200/- per annum, deducted $\frac{1}{3}$ rd from out of the said amount towards his personal living expenses and arrived at Rs.16,800/- towards annual contribution to the family and applied multiplier '13' as per II schedule to Section 163-A of the Act and arrived at Rs.2,18,400/- towards loss of dependency. Besides the same, the Tribunal granted Rs.5,000/- towards consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate in accordance with the entries in II Schedule to Section 163-A of the Act. Thus, a total sum of Rs.2,27,900/- was granted towards compensation.

7. The learned counsel for the appellants would submit that the Hon'ble Supreme Court in the recent decisions opined that even the labourer would be earning Rs.3,000/- per month and therefore, request to adopt the same.

8. Keeping in view, the recent pronouncements of the Hon'ble Supreme Court, as against Rs.2,100/- which was taken by the Tribunal towards monthly earnings of the deceased, it can be taken at Rs.3,000/- or Rs.36,000/- per annum. When $\frac{1}{3}$ rd is

deducted towards personal living expenses of the deceased, the remainder of Rs.24,000/- would be the annual contribution to his family. If multiplier '13' is applied, it works out to Rs.3,12,000/-. Since the deceased was aged 48 years, in view of the law declared by the Hon'ble Supreme Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**¹, the appellants are entitled to 30% of loss of dependency towards future prospects. Then, it works out to Rs.93,600/-. Thus, the appellants are entitled to Rs.4,05,600/-. Besides the same, they are entitled to Rs.9,500/- awarded by the Tribunal towards conventional sums, since the claim was laid under Section 163-A of the Act. Thus, in total, they are entitled to Rs.4,15,100/-. Though, the amount arrived at exceeds the claim of Rs.4,00,000/- laid by the appellants, still, there cannot be any embargo in awarding excess compensation on determination, when it accounts for just and adequate compensation in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & Others**² and **Rajesh and others v. Rajbir Singh and others**³.

¹ (2009) 6 Supreme Court Cases 121

² AIR 2003 SC 674

³ 2013ACJ1403=2013(4)ALT35

9. The Tribunal has awarded the rate of interest @ 8% per annum. The same is maintained on the compensation of Rs.2,27,900/- granted by the Tribunal. However, on the enhanced compensation of Rs.1,87,200/-, the appellants are entitled to the interest @ 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh's case (supra 3)**.

10. The appellants are directed to pay Court fee on the excess amount, i.e., on Rs.15,100/-, granted by this Court than the amount claimed by them within a period of three (3) months from today.

11. Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

12. Miscellaneous Petitions, if any pending in this appeal shall stand closed.

A.SHANKAR NARAYANA, J

19th SEPTEMBER, 2016.

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