THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.2107 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.1,96,000/- as compensation by order and decree, dated 14.08.2007, in M.V.O.P.No.60 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Guntur, as against the claim of Rs.2,20,000/- laid under Sections 140, 141 and 163A of the Motor Vehicles Act, 1988 (for short, 'the Act'), the petitioners in the said O.P. preferred the present appeal, under Section 173 of the Act, seeking enhancement of compensation.

2. The appellants are the petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer of the lorry that involved in the accident, respectively, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

4. The basic facts reveal that on 18/19.06.2005 at about 02:30 AM, while one K. Venkanna was attending repair works of stationed lorry, on which he was working as a cleaner, alighted on Guntur – Chilakaluripet National Highway, since the driver of lorry bearing registration No.AP-09-W-3429, owned by respondent No.1, driven it in a rash and negligent manner coming from Guntur side,

dashed the stationed lorry from its behind, as a result, the rear left tyre of the lorry ran over him causing fatal injuries and his instant death.

5. The petitioners, who are the wife and children of the deceased, K. Venkanna, claiming that the deceased was 38 years old, drawing salary of Rs.2,500/- per month, sought a sum of Rs.2,20,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the offending lorry, respectively.

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

7. Respondent No.2 – insurer opposed the claim stating that the deceased stood in the middle of the road at the relevant time and that due to collision of two vehicles, the accident took place, and disowned its liability.

8. Basing on the said pleadings, the Tribunal framed three issues.

9. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

10. The Tribunal, having recorded a finding in favour of the petitioners on issue No.1, determined the compensation by taking the age of the deceased as 38 years and annual income notionally at Rs.15,000/-, and deducting 1/3rd therefrom towards personal expenses

of the deceased, taken the remainder, Rs.10,000/- towards contribution to the family and applying multiplier '16', basing on the multiplier factor provided in the second schedule to Section 163A of the Act, arrived at Rs.1,60,000/- towards loss of dependency and granted the same. Besides the same, the Tribunal has granted Rs.15,000/- towards loss of estate, Rs.3,000/- towards funeral expenses, Rs.3,000/- towards transport charges and Rs.15,000/- towards loss of consortium. Thus, a total sum of Rs.1,96,000/- was awarded towards compensation with interest at 7.5% per annum.

11. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the minimum monthly wages fixed to a cleaner of public transport vide G.O.Ms.No.30, dated 27.07.2000, itself was Rs.2,313/- and thereafter, the same was amended and fixed as more than Rs.3,000/-.

12. Heard Sri N. Subba Rao, learned counsel for the appellants. No representation for respondent No.2 – Insurance Company. Though, service was completed on respondent No.1 – owner of the offending lorry, none appears for him.

13. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners.

14. Learned counsel for the appellants would submit that the recent pronouncements of the Honourable Supreme Court, wherein

Rs.30,000/- is being taken as the annual income even for a labourer, have to be applied to the present case, and seeks to enhance the compensation.

15. The Tribunal, though, accepted the stand of the petitioners that the deceased was working as a cleaner, still, resorted to the notional income provided in the second schedule to Section 163A of the Act, which is made applicable to an un-earning person. Therefore, taking the income of the deceased at Rs.2,313/- per month, as per G.O.Ms.No.30, mentioned in the grounds of appeal, and deducting 1/3rd therefrom towards personal living expenses of the deceased, the remainder, Rs.1,542/- per month or Rs.18,504/- per annum, would be the contribution of the deceased to the family. Since the deceased was aged 38 years, multiplier factor '15' is applicable, as provided in the table formulated by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], but not '16', as adopted by the Tribunal, and when multiplier factor '15' is applied, it works out to Rs.2,77,560/-. Since the deceased was 38 years old, though, self-employed, petitioners are entitled to future prospects at the rate of 50% of the loss of dependency, in view of the law declared by the Honourable Supreme Court in **Sarla Verma's case (supra)** and **Rajesh and others v. Rajbir Singh and others**[2], which works out to Rs.1,38,780/-. Thus, the petitioners are entitled to Rs.4,16,340/- towards loss of dependency, including future prospects. Besides the

[1] (2009) 6 SCC 121
[2] (2013) 9 SCC 54

same, the petitioners are also entitled to Rs.50,000/- towards conventional sum. Thus, the petitioners are entitled to a total sum of Rs.4,66,340/- towards compensation as against Rs.1,96,000/- awarded by the Tribunal. The Tribunal has awarded interest at 7.5% per annum. Since the said rate of interest is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh's case (supra 2)**, the same is maintained on the enhanced amount also.

16. Though, the compensation determined exceeds the claim made by the petitioners at Rs.2,20,000/-, still, the petitioners cannot be deprived of the amount of Rs.4,66,340/- arrived at in determining the just and adequate compensation, in view of the decisions of the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others**[3], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[4] and **Rajesh's case (supra 2)**. Hence, the petitioners are granted Rs.4,66,340/- as compensation.

17. The appellants - petitioners are directed to pay Court fee on Rs.2,70,340/- within three months from today.

18. Accordingly, the appeal is allowed enhancing the compensation from Rs.1,96,000/- to Rs.4,66,340/- with interest at 7.5% per annum.

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[3] AIR 2003 SC 674
[4] 2012 ACJ 191 (SC)

19. The enhanced amount shall be apportioned among the appellants – petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

20. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 21, 2016.
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