HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1330 OF 2009

JUDGMENT:

The petitioners in O.P. No.370 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal - cum - Additional District Judge, Karimnagar (for short 'the Tribunal') having got dissatisfied with the award of Rs.2,00,500/- as compensation as against the claim of Rs.4,00,000/- laid under Section 166 (1) (c) of the Motor Vehicles Act, 1988 (for short 'the Act'), by the order and decree, dated 25-08-2006, preferred the instant appeal under Section 173 of the Act, requesting to grant balance amount on the ground that the Tribunal has not properly appreciated the evidence on record and the monthly earnings of the deceased taken by it were on lower side.

2. The appellants herein, who are wife and children of deceased - Dandugula Yellaiah, are the petitioners, while respondent Nos.1 to 3, who are driver, owner and insurer of lorry bearing registration No.UP 42A 4827, are respondents as such and respondent No.4, who is mother of the deceased, is also arrayed as such in the OP before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the OP

before the Tribunal.

4. The fact-situation occurring in the instant case is, that on
10-02-2005 at 4.30 p.m., one Dandugula Yellaiah along with his wife was returning to their village - Garrepalli on a bicycle having completed his work at Burhanmiyapet village, and when they reached cattle market at Garrepallli village on Rajiv Rahadari from Godavarikhani to Hyderabad, a lorry bearing registration No.UP 42A 4827 belonging to respondent No.2 which was insured with respondent No.3 driven by respondent No.1 in a rash and negligent manner, hit the bicycle from behind, due to which, he sustained injury to right knee and then the lorry ran over his abdomen causing his death at 7.00 p.m. in Government Hospital, Karimnagar.

i) Concerned police also registered a crime against the lorry driver. The petitioners, who are wife and children of the deceased, stating that the deceased was 35 years old on the date of accident, doing labour work and also got cranes to dig agriculture wells, used to earn Rs.8,000/- per month and contributing the same to the family, sought a sum of Rs.4,00,000/- arraying the driver, owner, insurer and mother of the deceased as respondent Nos.1 to 4, respectively.

5. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal.

6. Respondent No.3 contested the claim raising usual grounds.

7. Respondent No.4 filed counter supporting the claim of the petitioners, seeking apportionment of the compensation towards her share.

8. The Tribunal having framed three (03) issues examined the 1st petitioner as PW.1 and marked Exs.A-1 to A-5 on behalf of the petitioners. On behalf of the respondents, no witnesses were examined, but attested copy of policy was marked as Ex.B-1.

9. On issue No.1, the Tribunal recorded a finding favouring the petitioners. On issue No.2, the Tribunal fixing the income of the deceased at Rs.2,000/- per month as unskilled labourer, worked out the daily wage at Rs.66/- for 25 days and arrived at Rs.1650/- per month, but, however, taken the income at Rs.1500/- per month as just and reasonable and arrived at Rs.18,000/- per annum; deducted 1/3rd there-from towards personal living expenses of the deceased and the remainder, Rs.12,000/- was taken as contribution to the family. Since the deceased was aged 35 years, multiplier '16' was applied and arrived at Rs.1,92,000/- towards loss of

dependency. Besides the same, the Tribunal also granted Rs.2,500/- towards loss of estate; Rs.1,000/- towards transport charges for shifting the deceased to the hospital from the place of accident; Rs.5,000/- towards loss of consortium to the 1st petitioner. Thus, a total sum of Rs.2,00,500/- was granted as compensation with interest at 6% per annum thereon and apportioned the same among petitioner Nos.1 to 4 and respondent No.4.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and went wrong in computing the daily wage as well as the monthly earnings and even interest awarded at 6% per annum is on lower side and, therefore, sought to grant balance amount by hiking the rate of interest.

11. Heard Sri Ramchandar Rao Vemuganti, learned counsel for the appellants - petitioners, and Smt. S.A.V. Ratnam, learned standing counsel for respondent No.3. As per the cause title in the memorandum of grounds of appeal, it is mentioned that respondent Nos.1 and 2 are not necessary parties as they remained *ex parte* before the Tribunal. Despite service of notice, none appears for respondent No.4.

12. Perused the order and the material on record, both, oral and documentary.

13. It is no doubt true, there is no proof to show that the deceased was owning rigs and earning Rs.8,000/- per month, besides being agricultural labour. The very fact that the deceased met with an accident while riding bicycle while returning home along with his wife is sufficient enough to hold that the petitioners, with a view to get enhanced compensation exaggerated the income of the deceased by stating that the deceased was owning rigs and operating the same to dig agricultural wells. So, it has to be held that the amount taken by the Tribunal at Rs.1650/- per month at the rate of Rs.66/- per day would be reasonable amount and the Tribunal was not justified to reduce it to Rs.1500/- per month. In such an event, the annual income of the deceased would work out to Rs.19,800/- [Rs.1650 x 12]. Since the dependants on the deceased are numbering five (05) i.e., petitioner Nos.1 to 4 and respondent No.4, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1], deduction at 1/4th is permissible towards personal living expenses which works out to Rs.4,950/- and when the same is deducted, the remainder Rs.14,850/- accounts for contribution to the family. Since the deceased was 35

years old as fixed by the Tribunal, the relevant multiplier is '16' in view of the same decision. When multiplier factor '16' is applied, the loss of dependency works out to Rs.2,37,600/- [Rs.14,850/- x 16]. Since the deceased was aged 35 years, towards loss of future prospects, though, he was agricultural labour, but in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[2] the petitioners are entitled to 50% there-of, which works out to Rs.1,18,800/-. Thus, the total compensation to which the petitioners and respondent No.4 entitled works out to Rs.3,56,400/-[Rs.2,37,600/- + Rs.1,18.800/-] towards loss of dependency including future prospects. Towards conventional sum, the petitioners and respondent No.4 are also entitled to Rs.50,000/- in view of the decisions of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3]. Thus, the petitioners and respondent No.4 are entitled to Rs.4,06,400/- [Rs.3,56,400/- + Rs.50,000/-] as compensation.

14. It is no doubt true, the compensation worked out exceeds the amount of Rs.4,00,000/- which is the claim made by the petitioners and respondent No.4. But, however, in view of the decisions of the Hon'ble Supreme

Court in **Nagappa v. Gurudayal Singh & others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's Case** (Supra 2), when the compensation determined is fair and adequate, the petitioners cannot be deprived of their entitlement. Hence, the compensation awarded by the Tribunal at Rs.2,00,500/- is enhanced to Rs.4,06,400/- rounded it off to Rs.4,06,000/-. The Tribunal has granted the interest at 6% per annum, the same is enhanced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2). The petitioners are directed to pay court fee on excess compensation within three (03) months from today.

15. In the result, the appeal is allowed, and the order and decree, dated 25-08-2006, in O.P. No.370 of 2005, passed by the Tribunal are modified enhancing the compensation to Rs.4,06,000/- (Rupees four lakhs and six thousand) from Rs.2,00,500/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The apportionment among the petitioners and respondent No.4 would be in accordance with the apportionment made by the Tribunal. No order as to costs.

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

A. SHANKAR NARAYANA, J

August 01, 2016.

Mgr

---

[1]. (2009) 6 Supreme Court Cases 121

[2]. 2013 ACJ 1403

[3]. 2014 ACJ 1430

[4]. AIR 2003 SC 674

[5]. 2012 ACJ 191 (SC)