THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1248 OF 2009

JUDGMENT:

Questioning the award of Rs.6,95,000/- as compensation by order and decree, dated 29.04.2008, in O.P.No.338 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad, respondent No.2 – United India Insurance Company Limited in the said O.P. preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), on the ground that the amount awarded is arbitrary and excessive.

2. The appellant is respondent No.2, whereas respondent Nos.1 to 4, who are the parents, brother and sister of the deceased Chintha Harish, are the petitioners, and respondent No.5, who is the owner of the lorry that involved in the accident, is respondent No.1 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 brief facts are that on 05.01.2005, while one Chintha Harish @ Chinta Hari Krishna along with another was travelling on a scooter bearing registration No.AP-25-J-5621 from Choutpalli towards Armoor, at about 02:45 PM, when they reached Perkit Village outskirts on National Highway No.7, a lorry bearing registration No.HR-38-H-9972 driven at high speed in a rash and

negligent manner coming in opposite direction dashed the scooter, due to which, the said Chintha Harish fell down and the front wheel of the lorry ran over him, resulting in fracture injuries to him. He was immediately shifted to M.J. Hospital, Armoor, and from there, he was shifted to Government Headquarters Hospital, Nizamabad, for better treatment, but he succumbed to the injuries while he was being shifted.

5. The petitioners, who are the parents, brother and sister of the deceased, claiming that the deceased was 20 years old on the date of accident earning Rs.20,000/- per month on agriculture and Arrack-cum-Excise business and contributing the entire earnings to the family, sought a sum of Rs.15,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively.

6. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

7. Respondent No.2 – Insurance Company opposed the claim requiring the petitioners to prove the averments made in the petition and, finally, sought to dismiss the claim petition.

8. Based on the pleadings put forth by both sides, the Tribunal has framed three issues. During enquiry, on behalf of the petitioners, PWs.1 to 3 were examined and got marked Exs.A1 to A7. On behalf

of respondent No.2, RW.1 was examined, but no documentary evidence was marked.

9. On issue No.1, the Tribunal recorded a finding in favour of the petitioners. On issue No.2, the Tribunal, while discarding Ex.A7, showing the annual income of the deceased at Rs.2,40,000/- on agriculture and excise business, issued by PW.2 – Sarpanch of the Village, as it was bereft of relevant details and that PW.2 was incompetent to issue such Certificate, basing on the contents in Ex.A3–inquest report showing the occupation of the deceased as business, via media, taken the monthly earnings of the deceased at Rs.5,000/- or Rs.60,000/- per annum and deducting 1/3rd therefrom towards his personal expenses, taken the remainder Rs.40,000/- as contribution of the deceased to the family.

10. The Tribunal, then, considering the age of younger parent of the deceased, taken the multiplier factor '16' mentioned in the second schedule to Section 163A of the Act, and arrived at Rs.6,40,000/- towards loss of dependency and awarded the same, besides awarding Rs.5,000/- towards transport charges and funeral expenses, and Rs.50,000/- towards loss of love and affection, loss of company of the deceased and pain and shock suffered by the petitioners. Thus, a total sum of Rs.6,95,000/- was awarded with interest at 7.5% per annum

basing on the decision of the Honourable Supreme Court in **Tamil Nadu ST Corporation v. Rajapriya**[1].

11. The aforesaid order is under challenge in the present appeal contending in the grounds that the Tribunal was not right in applying multiplier factor '16' basing on the entries in second schedule to Section 163A of the Act, as the claim was laid under Section 166 of the Act, in view of the decision of this Court in **United India Insurance Co. Ltd. v. Mokkala Chandramma and others**[2], and that the Tribunal ought to have applied multiplier factor '12.79' as provided in the decision of this Court in **Bhagwandas v. Mohd. Arif**[3]**.** It is also stated that the amount of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is excessive. It is also stated that the Tribunal was not right in granting Rs.5,000/- towards transport charges and funeral expenses, since the petitioners are not entitled to funeral expenses in a claim laid under Section 166 of the Act, as held by this Court in **United India Insurance Company Limited v. Dandugula Bheembhai @ Bheemakka and others**[4].

12. Heard Sri V. Sambasiva Rao, learned counsel for the appellant, and Sri P. Radhive Reddy, learned counsel for respondent Nos.1 to 4 – claimants. Though, service was completed on respondent No.5 – owner of the lorry, none appears for him.

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[1] II (2005) ACC 476 (SC)
[2] 2002 (2) ALT 700
[3] AIR 1988 AP 99
[4] 2005 (4) ALT 515

13. Perused the order under challenge and the evidence on record let in by both sides.

14. Admittedly, the deceased was a bachelor and died in unmarried status. Therefore, the deduction permissible towards personal expenses is 50% of the earnings, but not 1/3rd, which principle is well settled. Touching the fixation of monthly earnings of the deceased at Rs.5,000/-, the Tribunal has not assigned any cogent reasons in fixing the earnings, except referring to the inquest report, where the occupation of the deceased was shown as business, and the fixation was made, via media, in the sense on hypothetical basis. Even assuming that the deceased was conducting some business, still, the monthly earnings can only be fixed at Rs.4,000/- as against Rs.5,000/- fixed by the Tribunal. The annual income, therefore, works out to Rs.48,000/-. When 50% thereof is deducted towards personal living expenses of the deceased, the contribution of the deceased to the family would work out to Rs.24,000/- per annum.

15. The Tribunal has taken multiplier factor ‘16’, basing on the age of mother of the deceased, being younger parent, who is 40 years old, but it is well settled now that age of the deceased is the criteria for applying the relevant multiplier factor and in view of the multiplier factor provided in the table formulated by the Honourable

Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[5], the appropriate multiplier factor would be '18', as the deceased was aged 20 years on the date of accident. When multiplier '18' is applied, the loss of dependency works out to Rs.4,32,000/-. The Tribunal has granted Rs.5,000/- towards transport charges and funeral expenses. The same is maintained. The other amount of Rs.50,000/- granted towards loss of love and affection, loss of company of the deceased, and pain and shock suffered by the petitioners on account of untimely death of the deceased, is also maintained. Therefore, the petitioners are entitled to a total sum of Rs.4,87,000/- towards compensation with interest at 7.5% per annum, as awarded by the Tribunal.

16. Thus, the appeal is allowed in part reducing the compensation from Rs.6,95,000/- to Rs.4,87,000/- with the rate of interest at 7.5% per annum, as awarded by the Tribunal.

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

A. SHANKAR NARAYANA, J

September 07, 2016.
MD

[5] (2009) 6 SCC 121