HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 1251 OF 2009

JUDGMENT:

The instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') is preferred by the 2nd respondent – M/s. National Insurance Company Limited in O.P. No.1444 of 2003, aggrieved by the order, dated 29.08.2006 on the file of the Chairman, Motor Accidents Claims Tribunal – cum –District Judge, Nizamabad, (for short 'the Tribunal'), whereby and whereunder the Tribunal granted compensation of Rs.5,30,000/- for the death of one Loka Chinna Gangaram @ Dharpally Chinna Gangaram (hereinafter referred to as 'the deceased'), on the main ground that the quantum of compensation awarded by the Tribunal is excessive and arbitrary.

2. The appellant herein is the 2nd respondent in the O.P. before the Tribunal, while respondent Nos.1 to 6 herein are the petitioners and Respondent No.7 is respondent No.1.

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 fact situation occurring in the instant case is, that on 11.08.2003, while the deceased was returning from Armoor to Padkal on his scooter bearing No.AP-25/D 7573 and when he reached the limits of Argul Village at about 7.30 p.m., a lorry bearing No.UP 33/A 4458, driven by its driver in a rash and negligent manner came in opposite direction and dashed the scooter, due to which, he sustained head injury and died instantly.

5. The petitioners, who are the parents, wives and minor children of the deceased, filed the O.P contending that the deceased was aged 23 years on the date of accident and was doing agriculture, milk business and paddy and food grains business on commission basis and was earning Rs.4,00,000/- per annum on agriculture, Rs.15,000/- per moth out of business and Rs.8,000/- to Rs.10,000/- per month by selling milk, and sought a total compensation of Rs.20,00,000/-.

6. The owner of the vehicle remained *ex parte.* The second respondent-Insurance Company filed counter opposing the claim. It appears no violations have been pleaded specifically. On the ground that the claim was excessive and arbitrary, it sought to dismiss the claim petition.

7. The Tribunal on the basis of the said pleadings framed three issues in order to determine the liability and also the compensation to which the petitioners were entitled.

8. During enquiry, as many as four witnesses were examined on behalf of the petitioners and Exs.A.1 to A.10 were marked. On behalf of the second respondent-Insurance Company, none was examined except marking copy of the insurance policy as Ex.B-1, on consent.

9. The Tribunal decided issue No.1 in favour of the petitioners.

10. On issue No.2, basing on the entries in Ex.A.8 Pattadar Passbooks, on hypothetical basis, the Tribunal assessed the income of the deceased at Rs.45,000/- per annum, and after deducting 1/3rd towards his personal expenditure, considered the remaining amount of Rs.30,000/- as contribution to his family. Taking into consideration the age of the deceased as 25 years by the date of accident, the Tribunal applied multiplier '17' and arrived at Rs.5,10,000/- towards loss of dependency. Besides the same, the Tribunal has also granted Rs.15,000/- towards loss of consortium and loss of love and affection to the fifth petitioner, wife of the deceased and Rs.5,000/- towards transportation charges and funeral expenses. Thus, a total sum of Rs.5,30,000/- was granted with interest @ 7.5% per annum.

11. The second respondent - Insurance Company filed this appeal mainly on the ground that the Tribunal ought to have taken the supervision charges at Rs.15,000/- per annum as per Second Schedule of the Act and that even granting of Rs.5,000/- towards transportation charges and funeral expenses is on higher side and thereby, sought to modify the impugned order.

12. Heard Sri T. Ramulu, learned Standing Counsel for the appellant. No representation for respondent Nos.1 to 6.

13. It appears that service on respondent No.7 was not completed. However, in view of the fact that the respondent No.7 remained *ex parte* before the Tribunal and suffered decree, his absence is of no consequence.

14. A perusal of the impugned order discloses that the Tribunal, basing on the entries in Ex.A.8-pattadar pass books only, determined the income of the deceased at Rs.45,000/- per annum i.e., Rs.3,750/- per month, which is reasonable. In fact, the Tribunal deducted 1/3rd from the said amount towards personal expenses of the

deceased. As could be seen from the claim petition, there are altogether six dependents on the deceased. In view of the pronouncement of the Hon'ble Supreme Court in ***Sarla Verma & others v. Delhi Transport Corporation and another*** [1]***,*** the permissible deduction is 1/4th. This apart, the amounts of Rs.15,000/- and Rs.5,000/- granted by the Tribunal towards loss of consortium and funeral expenses appear to be on lower side. Further, the Tribunal did not grant any amount towards loss of estate and future prospects in addition to the loss of dependency. In view of the same, the compensation awarded by the Tribunal cannot be said to be on higher side. Thus, viewed from any angle, there is no merit in the appeal.

15. The appeal is accordingly dismissed confirming the impugned order and decree in all respects. No order as to costs.

16. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 27.07.2016
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[1] (2009) 6 Supreme Court Cases 121