

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.900 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.5,37,452/- as compensation by the order dated 04.11.2008 in M.V.O.P. No.475 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari at Rajahmundry (for short, 'the Tribunal') as against the claim of Rs.12,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with the Rules framed thereunder, for the death of one Nirugondula Arjuna Rao, who is husband of appellant No.1 and father of appellant Nos.2 and 3, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The Tribunal, somehow, went wrong in recording the provision of law, Section 163-A of the Act alone both in the order as well as the decree without assigning any reason that the petitioners did opt for the claim under Section 163-A or Section 166 of the Act, since the claim, if determined under Section 166 of the Act, would be more beneficial. Hence, the claim has to be treated as having been laid under Section 166 of the Act, as was done by the Tribunal, though, without proper comprehension, but, still, it has to be viewed that the Tribunal kept in view that the legislation is a beneficial legislation.

3. Appellant Nos.1 to 3 herein, who are the wife and sons of the said Nirugondula Arjuna Rao, are petitioner Nos.1 to 3, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of the accident vehicle, i.e., lorry bearing registration No.AP 4T 1477, are respondent Nos.1 to 3, respectively, in the original petition.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. The claim petition was dismissed against respondent No.1-driver, but however, against respondent No.2-owner and respondent No.3-insurer, the claim petition was allowed. It appears that respondent No.1-driver of the accident vehicle had expired.

6. Heard Sri Davuluri Narasimha Rao, learned counsel for the appellants-petitioners, and Dr. Challa Srinivasa Reddy, learned Standing Counsel for respondent No.3. Notice sent to respondent No.1-driver was returned as he died. Though, respondent No.2 was not served with notice, it is of no consequence as he remained *ex parte* before the Tribunal and suffered decree.

7. It is not in dispute that the death of Nirugondula Arjuna Rao (deceased) occurred in a road accident on account of the rash and negligent driving of the deceased-respondent No.1, while the deceased was returning to his office on bicycle at about 6-00 p.m. on 12.03.2006 near Nagarjuna Plywood Factory at Devarapalli, a lorry

hit him and his death occurred instantly. The petitioners, stating that the deceased was working as S.I.O. in Telephone Exchange Office at Devarapalli village, West Godavari District, drawing a salary of Rs.10,000/- per month, sought the aforesaid compensation.

8. Respondent Nos.1 and 2, who are driver and owner, remained *ex parte* before the Tribunal.

9. Respondent No.3 alone contested the claim by filing a counter.

10. On the basis of the pleadings, the Tribunal framed three issues in order to determine the liability as well as the compensation to which the petitioners entitled to.

11. During enquiry, petitioner No.1, besides examining herself as P.W.1, has also examined the Superintendent of the office, in which the deceased was employed, as P.W.2, by name, A.Apparao, and one Annabathula Kanaka Durga Vara Prasad, an eyewitness to the accident, as P.W.3, and marked Exs.A.1 to A.7; whereas, on behalf of respondent No.3-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

12. The Tribunal, referring to the evidence of P.W.2, having recorded findings on issue Nos.1 and 2 in favour of the petitioners, in order to determine the compensation, basing on the entries in Exs.A.6 and A.7 proved through P.W.2, taken the age of the deceased as 45 years, as Ex.A.7 shows his date of birth as 16.12.1960. The Tribunal,

referring to Ex.A.6 in the light of the evidence of P.W.2, found that the gross salary drawn by the deceased was Rs.10,984/- and net salary Rs.8,429/-, but stating that without further evidence being adduced with reference to relevant acquittance register, it would be difficult to accept the contents of Ex.A.6, excluded Ex.A.6 and accepted Ex.A.7, which is an extract of service register marked through P.W.2. Since Ex.A.7 shows the figures 'Rs.6,070/-', the Tribunal took the said amount as the salary relating to the month of March, 2006, during which month, the accident had taken place and the death of the deceased did occur. But the said finding appears to be palpably wrong for the reason that the Tribunal has not properly appreciated Exs.A.6 and A.7 entries. Ex.A.7 relate to the scale of pay during March, 2006. The basic in the scale of pay relating to the deceased was recorded as Rs.6,070/-. Thus, without emoluments being added the amount shown relates to the basic pay alone. The Tribunal was not right in viewing it as the salary drawn by the deceased, more particularly, when the contents of Ex.A.6 were available and, in fact, ought to have examined it meticulously. Salary particulars of the deceased in Ex.A.6, which related to the month of September, 2005, would show that the basic pay of the deceased as Rs.5,920/-. It appears that the deceased gained an increment subsequently at Rs.150/- in the time scale and that was the reason his basic was shown as Rs.6,070/- in the pay scale, which is recorded in Ex.A.7-service register extract. Therefore, the gross salary of the deceased ought to have taken as Rs.10,984/-, if not the gross salary at least, in view of

the law then in vogue ought to have taken net salary of Rs.8,400/-, which the Tribunal did not do.

13. Therefore, since there is nothing forthcoming to show what was the rate of percentage of dearness allowance during the month of March, 2006, the gross salary is taken as Rs.10,984/- for the purpose of determining compensation. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, since the dependents are three in number, 1/3rd deduction is permissible towards personal living expenses from the gross salary of Rs.10,984/- as no statutory deductions have been shown nor spoken to by P.W.2, which works out to Rs.3,661/-. When the said amount is deducted, the contribution to the family works out to Rs.7,323/- per month or Rs.87,876/- per annum.

14. The deceased was running 46th year as his date of birth was recorded as 16.12.1960 in Ex.A.7. Therefore, relevant multiplier would be '13' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1). But the Tribunal has taken '15' fixing the age of the deceased as 45 years. When the multiplier '13' is applied, loss of dependency works out to Rs.11,42,388/-. Since the petitioners are also entitled to future prospects, in addition to the loss of dependency at 30% as per the law declared by the Hon'ble

¹ (2009) 6 SCC 121

Supreme Court in **Rajesh and others v. Rajbir Singh and others**², which works out to Rs.3,42,716/-. Thus, the petitioners are totally entitled to Rs.14,85,104/- towards loss of dependency and future prospects put together. This apart, towards conventional sum, the petitioners are entitled to Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**³.

15. Petitioners laid the claim for Rs.12,00,000/- only, but, certainly, they cannot be deprived of Rs.15,35,104/-, though, it exceeds the claim made by them, in view of the law declared by the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**⁴, **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**⁵ and **Rajesh's** case (supra 2).

16. Thus, the petitioners are entitled to a total sum of Rs.15,35,104/- (Rupees fifteen lakhs thirty five thousand one hundred and four) as against Rs.5,37,452/- granted by the Tribunal towards compensation and the same is accordingly granted. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today. The enhanced amount shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal.

² 2013 ACJ 1403

³ LAWS (SC) -2014-4-67

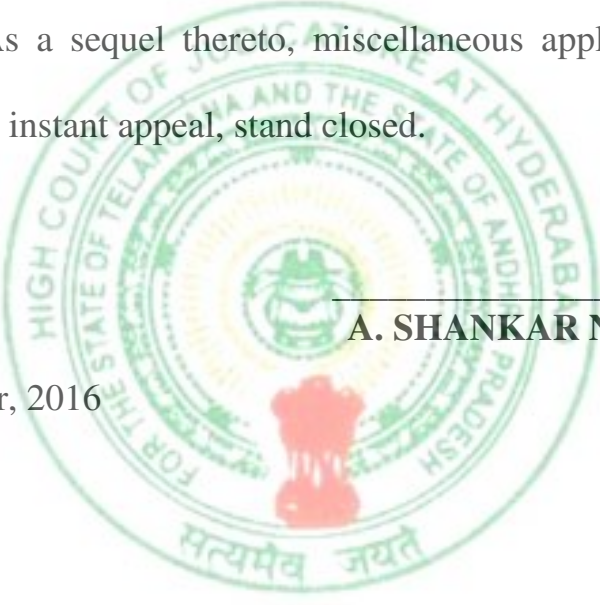
⁴ AIR 2003 SC 674

⁵ 2012 ACJ 191 (SC)

17. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the enhanced compensation amount also in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

18. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

19. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.



A. SHANKAR NARAYANA, J

21st September, 2016
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