**THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**MACMA.No.106 of 2009**

**JUDGMENT:**

Aggrieved by the order and decree dated 08.07.2008, in O.P.No.1862 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), respondent No.2 - Insurance Company preferred the present appeal contending that the compensation awarded by the Tribunal is arbitrary.

2. By the aforesaid order, the Tribunal granted compensation of Rs.6,14,000/- for the death of the son of respondent Nos.1 and 2 herein, who are the claimants before the Tribunal, as against the claim of Rs.7,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988.

3. The appellant and respondent No.3 herein, who are the insurer and the owner of the tractor bearing registration No. AP 21 T 1782, respectively, were respondent Nos.2 and 1, respectively, while respondent Nos.1 and 2, who are the parents of the deceased, were petitioner Nos.1 and 2, respectively, in the original petition.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the

Tribunal in the original petition.

5. The fact-situation would show that on 02.04.2006, while Palle Anjaneyulu (deceased), the son of the petitioners, was proceeding on a two-wheeler and when reached Maisigandi temple at about 7.30 p.m., a tractor bearing registration No. AP 21 T 1782, driven in a rash and negligent manner, dashed the two-wheeler, due to which, he sustained injuries and succumbed to them. The petitioners, being the parents, stating that the deceased aged 22 years was a partner in Srilakshmi Medical and General Stores, earning Rs.7,500/- per month, though unmarried, sought a compensation of Rs.7,00,000/-.

6. Respondent No.1-owner of the tractor remained *ex parte* before the Tribunal.

7. Respondent No.2-Insurer of the tractor contested the claim raising various pleas.

8. The Tribunal, basing on the pleadings of the parties, framed three issues about the responsibility for the accident.

9. During trial, petitioner No.1 examined himself as P.W.1, besides examining two witnesses as P.Ws.2 and 3, and marked Exs.A1 to A14. On behalf of

respondent No.2, no witnesses were examined and no documents were marked.

10. The Tribunal, on appraisal of evidence, more particularly, the contents of Exs.A1 to A5, opined that due to rash and negligent driving of the driver of the Tractor, the accident had occurred and, accordingly, recorded a finding in favour of the petitioners.

11. In regard to determination of compensation, the Tribunal, believing the evidence of P.W.1 and relying on the contents of Exs.A6 to A14, felt that the deceased must have been earning a considerable amount on his business and fixed the income at Rs.6,000/- per month. However, deducted 1/3rd there from towards his personal expenses and taken the remainder i.e., Rs.4,000/- per month or Rs.48,000/- per annum as contribution of the deceased to the family. Having placed reliance on the decision in **Bhagwandas v. Mohd. Arif**[1]**,** the Tribunal applied multiplier "12.79" taking the age of the younger parent of the deceased as 40 years and arrived at Rs.6,13,920/- and, by rounding it to Rs.6,14,000/-, granted the same towards loss of earnings for the death of the deceased. The rate of interest at 7.5% per annum was granted on the compensation amount of Rs.6,14,000/-.

12. Aggrieved by the said award, the Insurance Company preferred the present appeal contending in the grounds that the Tribunal went wrong in treating the deceased as a partner, without there being a partnership deed. In fact, it is also raised in the grounds that the Tribunal went wrong in applying multiplier "12.79" for a person aged 40 years. The main ground raised by the appellant is that, though, there is no formidable evidence, the Tribunal went wrong in assessing the monthly income at Rs.6,000/- per month. For these reasons, the appellant sought to set aside the award and decree passed by the Tribunal.

13. Heard Ms. I. Maamu Vani, learned Standing Counsel for the appellant, and Sri V. Atchuta Ram, learned counsel for Respondent Nos.1 and 2. Respondent No.3, who is the owner of the crime vehicle, refused to receive the notice. Therefore, it is presumed that the notice is deemed to have been served on respondent No.3.

14. Perused the order and material on record.

15. The submission of learned counsel for the appellant is that there is no evidence worth the name to show that the deceased was a partner of Srilakshmi

Medical and General Stores and no partnership deed is filed to prove the same and that, that has been the reason the Tribunal deviated in appreciation of evidence on record and arrived at in granting excess amount as compensation.

16. A perusal of Exs.A8 to A12 would show that licenses were issued by the concerned authority to run Srilakshmi Medical and General Stores and, in fact, Ex.A9 is the certificate of registration filed by the petitioners. Even there has been renewal certificate of registration marked as Ex.A12. In the presence of Exs.A8 to A12, certainly, it cannot be said that the Tribunal recorded a wrong finding concerning as to the deceased being a partner of a Medical and General Stores business. That was the reason, the Tribunal was right in arriving at the monthly earnings at Rs.6,000/- per month. Be that as it may, even though, the deceased died in unmarried status, the Tribunal did not deduct 50%, but, somehow, went wrong in deducting $1/3^{rd}$ of the earnings and applied multiplier "12.79%" taking the age of the younger parent of the deceased. Thus, on both counts, the Tribunal ought to have deducted 50% of the income and ought to have applied multiplier factor taking the age of the deceased, in view of the decision in **Amrit Bhanu Shali and others v.**

**National Insurance Co. Ltd., and others**[2]. Even if 50% is deducted and multiplier “18” is applied, it works out to slightly more than Rs.6,14,000/- awarded by the Tribunal. In fact, towards future prospects, nothing was awarded by the Tribunal. Thus, viewed from any angle, the compensation of Rs.6,14,000/- arrived at by the Tribunal cannot be considered as excessive or arbitrary.

17. The interest awarded by the Tribunal at 7.5% per annum is in tune with the law laid down by the Hon’ble Apex Court in **Rajesh and others v. Rajbir Singh and others.** Hence, for the aforesaid reasons, there is no merit in the instant appeal.

18. Accordingly, the instant appeal is dismissed, confirming the order and decree of the Tribunal. No order as to costs.

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

**JUSTICE A.SHANKAR NARAYANA**

18.07.2016
v v

[1] 1987 ACJ 1052

[2] 2012 (6) SCALE