HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.797 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.4,20,000/- as compensation as against the claim of Rs.11,00,000/- laid under Sections 166 (1) and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, by the order and decree, dated 09-11-2005, in O.P. No.443 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Adilabad (for short 'the Tribunal'), the petitioners preferred the instant appeal seeking enhancement of compensation.

2. The appellants herein, who are wife, children and parents of Shadagoppula Chandraiah, are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of tractor and trailer bearing registration No.AP 15 U 3823 and 3824, respectively, are respondents as such in O.P. before the Tribunal.

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

4. The facts, in brief, are that on 30-11-2000, one

Shadagoppula Chandraiah alias Stagopal Chandraiah was returning to Srirampur from Bheemaram on his motor cycle bearing registration No.AP 1A 6844 and at about 7.00 p.m., when he reached near Polampalli bus stage on Chennoor - Mancherial road, a tractor-cum-trailer bearing registration No.AP 15U 3823 and 3824 driven by its driver in a negligent manner came in opposite direction and hit him, due to which, he sustained injuries and succumbed to them subsequently. Stating that he was earning Rs.7,255/- per month as
a Coal/Badili Filler in Singareni Collieries Company Limited (SCCL) at Bhupalapalli and contributing the entire amount for sustenance of the family, sought the aforesaid sum from respondent Nos.1 and 2, owner of the vehicle and its insurer, respectively.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurer opposed the claim raising various pleas.

7. Basing on the said pleadings, the Tribunal framed three issues for determining compensation and also fixing liability to pay the same.

8. During inquiry before the Tribunal, on behalf of the petitioners, besides petitioner No.1 examining herself

as PW.1, has examined one Vijay, an eye-witness to the occurrence, and marked Exs.A-1 to A-7. On behalf of respondent No.2, no witnesses were examined and no documents were filed.

9. On appraisal of evidence, the Tribunal recorded a finding on issue No.1 in favour of the petitioners. On issue No.2, the Tribunal though, referred to Ex.A-6 consisting of three salary pay-slips for the months of April, 1999, June, 2000 and February, 2000, showing the gross salary as well as carry home salary of the deceased, still, did not believe the same on the ground that none of the officials from SCC Limited was examined to prove the authenticity of these documents and thereby the Tribunal arrived at Rs.3,000/- per month notionally or Rs.36,000/- per annum, as the income; deducted 1/3rd there-from towards personal expenses of the deceased and the rest towards contribution to the family, and applying multiplier '17' since the deceased was 31 years, worked out the loss of dependency at Rs.4,08,000/-. Besides the same, granted Rs.12,000/- under all conventional heads making a total sum of Rs.4,20,000/- and granted the same with interest at 7% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners contending in the grounds that the Tribunal has not

appreciated the evidence on record and that the Tribunal went wrong in taking the monthly income of the deceased and, therefore, sought to grant balance amount.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant – petitioner, and Sri J. Ravi Shankar, learned counsel for respondent No.2 - Insurer. Despite service of notice, none appears for respondent No.1, owner of the vehicle.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. The finding recorded by the Tribunal in fixing the income at Rs.3,000/- per month or Rs.36,000/- per annum cannot be upset for the reason that none of the officials from administrative side of SCC Limited was examined to prove the pay slips marked as Ex.A-6. No reasons are forthcoming from the petitioners' side for non-examination of the witnesses to prove the said pay slips.

14. Now, turning to what would be the deduction, the Tribunal has deducted 1/3rd towards personal expenses. Since dependants are six in number, 1/4th is permissible in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], in which case, contribution per annum

works out to Rs.27,000/-. The multiplier applied by the Tribunal is ‘17’, but for the age group of persons between 31 and 35 years, the relevant multiplier factor is ‘16’ and, therefore, when the multiplier ‘16’ is applied, it works out to Rs.4,32,000/-.

15. The petitioners are also entitled to future prospects as the Tribunal has treated that the deceased must be an employee but for non-examination of witnesses, pay slips were excluded, in which case, the petitioners are entitled to 50% of the loss of dependency which works out to Rs.2,16,000/-. Thus, the petitioners are entitled to Rs.6,48,000/- [Rs.4,32,000/- + Rs.2,16,000/-] towards loss of dependency including future prospects. This apart, the petitioners are also entitled to Rs.50,000/- towards conventional sum. Thus, in all, the petitioners are entitled to Rs.6,98,000/- as compensation as against the amount of Rs.4,20,000/- granted by the Tribunal.

16. In so far as the rate of interest is concerned, the Tribunal has granted the same at 7% per annum, but the same is enhanced to 7.5% per annum on the entire amount as per the decision of the Hon’ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2].

17. In the result, the appeal is allowed in part, and the order and decree, dated 09-11-2005, in O.P. No.443

of 2001, passed by the Tribunal are modified enhancing the compensation to Rs.6,98,000/- (Rupees six lakhs and ninety eight thousand) from Rs.4,20,000/- with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The apportionment among the petitioners 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

July 26, 2016.
Mgr

[1]. (2009) 6 Supreme Court Cases 121
[2]. 2013 ACJ 1403