HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1430 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.3,10,000/- towards compensation as against the claim of Rs.6,00,000/- laid under
Sections 166(1)(c) of the Motor Vehicles Act, 1988 (for short 'the Act'), appellants preferred this Civil Miscellaneous Appeal against the award and decree, dated 31.03.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Karimnagar at Jagtial, in O.P. No.82 of 2004, seeking enhancement of compensation.

2. The appellants herein, who are wife, children and mother of Vadlakonda Mallesham, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer, respectively, of the lorry bearing No.AP-16-U-0684 that involved in the accident, are respondent Nos.1 to 3, respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal and Vadlakonda Mallesham, who died in the

accident as 'deceased.'

4(a) The facts, in brief, are that on 05-06-2003, Vadlakonda Mallesham came to Hyderabad Airport in his Jeep bearing No.APR-2249 to pick up passengers arrived from Sharjah, and at about 8.30 a.m., he received passengers viz., Gangaram and Pochamallu at Hyderabad Airport and started to Jagtial, and when their Jeep reached Kothapalli village, having crossed Renikunta bridge, at about 1-00 p.m., lorry bearing No.AP-16-U-684 came in opposite direction, driven in rash and negligent manner at high speed, and hit their Jeep, due to which, Vadlakonda Mallesham sustained severe injuries and died instantly and a passenger also died in the same accident.

(b) A crime was registered against the driver of the lorry in Crime No.115 of 2003 for the offences punishable under Sections 304-A and 337 IPC.

(c) The petitioners, claiming that the deceased was aged 44 years at the relevant time and was earning Rs.6,000/- per month by maintaining a Travel agency in the name and style of "Sai Sri Travel Agencies" at Jagtial, laid the claim for Rs.6,00,000/- under Section 166 of the Act.

5. Respondent Nos.1 and 2, who are driver and

owner of the lorry involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the lorry, opposed the claim by raising various pleas.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. Petitioner No.2 examined himself as PW.1 and also examined an eyewitness to the accident as PW.2 and marked Exs.A-1 to A-11. On behalf of the insurer, no oral or documentary evidence was adduced.

9. As seen from the impugned order, learned standing counsel for the insurer has stated before the Tribunal during the course of arguments that the lorry in question was insured with the insurer. The Tribunal, having recorded a finding on issue No.1 in favour of the petitioners, while determining compensation under issue No.2, disagreed with the stand of the petitioners that the deceased was earning Rs.6,000/- per month and by assigning certain reasons, fixed his income at Rs.2,500/- per month and after deducting 1/3rd therefrom i.e., Rs.833/- towards his personal expenses, taking the remainder Rs.1,667/-, which works out to Rs.20,004/- (Rs.1,667 x 12) per annum towards his contribution to the

family, taking the age of the deceased as 44 years as recorded in Exs.A-5 and A-8, driving licence and passport, respectively, of the deceased, relying on the decision of this Court in **A. Lakshmi and others v. Arjun Associated Private Limited** (2004 (5) ALT 13), resorted to structural formula provided in Schedule - II to Section 163-A of the Act, and applying multiplier '15', worked out the loss of dependency at Rs.3,00,060/- (Rs.20,004 x 15) apart from granting Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards consortium, and, thus, awarded a total sum of Rs.3,10,000/- towards compensation.

10. Aggrieved of the compensation awarded by the Tribunal on the ground that it is meagre, petitioners preferred the instant appeal contending in the grounds of appeal that the Tribunal went wrong in fixing monthly income of the deceased at Rs.2,500/- without assigning any reason for rejecting their stand that he was earning Rs.6,000/- per month and even awarded less amounts towards conventional sums and, thereby, sought to grant the balance amount.

11. Heard Sri A. Vishnu Vardhana Reddy, learned counsel for the petitioners (appellants), and Sri J. Vishweswar Reddy, learned counsel for the insurer (respondent No.3).

12. In the cause title of the grounds of appeal, it is endorsed that respondent No.1, driver of the lorry, is not a necessary party to this appeal.

13. The appeal against respondent No.2, owner of the lorry, was dismissed for default on 05-01-2012. However, dismissal of the appeal against owner of the lorry does not come in the way of deciding the request of the petitioners herein as he suffered the decree having been remained *ex parte* before the Tribunal.

14. Learned counsel for the petitioners would submit that though, the travel agency was registered in the name of PW.2, who is none other than the son of the deceased, in the face of Exs.A-7 and A-8, which are R.C. Book and passport, respectively, of the deceased, fixation of monthly income of the deceased at Rs.2,500/- was not warranted, and, it is according to him that during the year of accident, he would be deriving amounts as a travel agent maintaining travel agency and he would be earning around Rs.6,000/- per month, and, therefore, sought to fix the same as his income, and, also contended that conventional sums granted by the Tribunal under the relevant heads are far below than the usual sums that would be awarded, and, accordingly, sought to grant the blance mount. He would also submit that in view of the decision of the Hon'ble Supreme Court

in **Sarla Verma v. Delhi Transport Corporation**[1]**,** 1/4th deduction is permissible towards personal expenses of the deceased since the dependants are four in number. So far as multiplier factor is concerned, he would fairly concede that relevant multiplier would be ‘14’, but, since no appeal is preferred challenging the multiplier adopted by the Tribunal, sought to maintain the same.

15. On the other hand, learned standing counsel for the insurer supported the award passed by the Tribunal except in regard to selection of multiplier.

16. Perused the impugned order and the oral and documentary evidence let in by the petitioners.

17. So far as determination of compensation is concerned, the Tribunal has taken Rs.2,500/- per month as the income of the deceased stating that his income can fairly be put at the said amount holding that the travel agency was registered in the name of PW.2 and not in the name of the deceased.

18. Be that as it may, since the travel agency is being maintained by the family of the deceased is not in dispute, as PW.2, who is petitioner No.2, is none other than the son of the deceased, and when viewed in the context of maintaining a jeep, certainly, earnings of the deceased can be fixed at Rs.3,000/- per month as against

Rs.2,500/- fixed by the Tribunal.

19(a) Thus, annual income of the deceased works out to Rs.36,000/- (Rs.3,000/- x 12) per annum and since the petitioners - dependants are four in number, deduction of 1/4th thereof i.e., Rs.9,000/- (Rs.36,000/- x ¼) is permissible towards personal expenses of the deceased and when the same is done, it works out to Rs.27,000/- (Rs.36,000/- - Rs.9,000/-) towards contribution of the deceased to his family. Since the deceased was 44 years old at the relevant time in view of the entries as to his date of birth recorded as 16-08-1959 in Exs.A-5 and A-8, driving licence and passport, respectively, of the deceased, relevant multiplier for his age group is '14' as per the table formulated by the Apex Court in **Sarla Verma's Case** (Supra 1). When multiplier '14' is applied to the multiplicand Rs.27,000/-, it works out to Rs.3,78,000/- (Rs.27,000/- x 14) towards loss of dependency.

(b) The Tribunal has not considered future prospects.

In view of the decision of the Hon'ble Supreme Court in **Munnalal Jain and another v. Vipin Kumar Sharma and others**[2]**,** the petitioners are entitled to 30% towards future prospects in addition to the loss of dependency worked out and the same works out to Rs.1,13,400/-

(Rs.3,78,000/- x 30%). Thus, the petitioners are entitled to Rs.4,91,400/- towards loss of dependency.

(c) Concerning conventional sum, in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3]**,** a sum of Rs.50,000/- is awarded as against Rs.2,000/**-** towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards consortium awarded by the Tribunal.

20. Thus, the petitioners are entitled to a total compensation of Rs.5,41,400/- (Rupees five lakhs fourty one thousand and four hundred only) as against Rs.3,10,000/- awarded by the Tribunal, and the same is accordingly awarded. The rate of interest on the compensation granted by the Tribunal at 9% per annum from the date of petition till realisation is maintained, however, on the enhanced compensation, it is fixed at 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4]. The enhanced compensation shall be apportioned between the petitioners in the same ratio as directed by the Tribunal.

21. Accordingly, the Civil Miscellaneous Appeal is

allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation, as stated supra. There shall be no order as to costs.

22. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 12, 2016.

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[1] **(2009) 6 SCC 121**

[2] **(2015) 6 SCC 347**

[3]. 2014 ACJ 1430

[4] **2013ACJ1403 = 2013(4)ALT35**