THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.2344 of 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') is preferred by the petitioners dissatisfied with the award of Rs.2,84,700/- towards compensation by the order and decree dated 18.04.2007 in O.P. No.458 of 2006 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Karimnagar (for short 'Tribunal') for the death of one Sampath, who was husband of petitioner No.1, father of petitioner Nos.2 and 3 and son of petitioner Nos.4 and 5, in a road accident that took place on 10.01.2006, while the deceased along with his younger brother, Elakurthi Raju was returning on a motorcycle bearing No.AP-15-AA-3439 having attended their personal work at Karimnagar and when they reached N.G. Ranga Agricultural University, Chinthakunta village at about 7.00 p.m., a Tata Indica Car bearing No.AP-31-R-4577 driven at high speed, came in the opposite direction and dashed the motorcycle, due to which, they sustained injuries.

The deceased was shifted to M.G.M. Hospital, Warangal where he succumbed to injuries on the next day. Petitioners claiming that the deceased was 26 years old on the date of accident, earning Rs.3,000/- per month by vending milk and Rs.60,000/- per annum on agriculture and suffered pre-mature death, due to which, they lost dependency, sought a compensation of Rs.5,00,000/-.

Respondent No.1, driver-cum-owner of the Tata Indica Car bearing No.AP-31-R-4577, filed counter opposing the claim stating that respondent No.3 being insurer of the vehicle is obligated to indemnify him.

Respondent No.2, who is also arrayed as owner of the Tata Indica Car that involved in the accident, remained *ex parte* before the Tribunal.

Respondent No.3, insurer of the Tata Indica Car that involved in the accident, opposed the claim raising usual pleas.

The Tribunal having framed three (3) issues, examined PWs.1 and 2 and marked Exs.A-1 to A-8 on behalf of the petitioners. On behalf of the respondents, respondent No.1 examined himself as RW.1, and marked Ex.B-1 copy of the insurance policy.

The Tribunal having considered the evidence on record, held both the issues in favour of the petitioners. On issue No.2, while determining the compensation, the Tribunal has taken the age of the deceased as 26 years based on the entries in Ex.A-7, applied multiplier factor '18' borrowing the same from Schedule - II to Section 163-A of the Act, taken the earnings at Rs.1,800/- per month for want of legally acceptable evidence being placed as to his income, deducted 1/3rd towards his personal expenses, taken Rs.14,400/- towards annual contribution and arrived at Rs.2,59,200/- towards loss of dependency, besides Rs.2,000/- towards loss of estate, Rs.2,500/- towards funeral expenses, Rs.1,000/- towards transport charges, Rs.10,000/- towards consortium to petitioner No.1 and Rs.10,000/- towards loss of love and affection, making a total of Rs.2,84,700/- and awarded the same with interest at 7.5% per annum.

The aforesaid judgment is now questioned in the present appeal on the ground that meager compensation has been granted for want of proper appreciation of evidence on record and sought to grant the balance amount.

Heard Sri Ramchandar Rao Vemuganti, learned counsel for the appellants-petitioners, and Sri P.Harinath Gupta, learned counsel for the 3rd respondent – Insurance Company.

Learned counsel for the appellants-petitioners would submit that the law laid down by the Hon'ble Supreme Court in some of the recent decisions would indicate that even an unearning member is construed to have been earning more than Rs.3,000/- per month and even when the death of a married lady occurs in an accident and her legal heirs seek compensation, towards the domestic services rendered by her are valued at Rs.3,000/- per month. In support of his submissions, he places reliance on the decisions of the Hon'ble Supreme Court in **Syed Sadiq v.**

Divisional Manager, United India Ins. Co[1] and **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd**[2]**.**

In **Syed Sadiq**'s case (1 supra), the Hon'ble Supreme Court opined that the injured therein was reasonably capable of earning Rs.6,500/- per month being a vegetable vendor, aged 24 years, who suffered 85% partial permanent disability. In **Ramachandrappa**'s case (2 supra), the Hon'ble Supreme Court found the claim of the appellant therein of earning Rs.4,500/- to be honest and enhanced the compensation. In the present case, though the petitioners have put forth the plea that the deceased was an agriculturist earning Rs.60,000/- per annum on agriculture as well as Rs.3,000/- per month on vending milk, but no evidence worth the name is forthcoming. Therefore, keeping in view, the decisions of the Hon'ble Supreme Court and also keeping in view, the fact that the accident had taken place on 10.01.2006, it would be reasonable to assume that the deceased was earning Rs.3,000/- per month, in which case the annual income works out to Rs.36,000/-. Since the dependents of the deceased are numbering five, who are the claim petitioners, 1/4th deduction is permissible towards personal living expenses of the deceased. When 1/4th is deducted from Rs.36,000/-, the remaining amount of Rs.27,000/- would be the annual contribution of the deceased to the family. As the deceased was 26 years old, the relevant multiplier factor is '17' as per the decision of the Hon'ble

[1] AIR 2014 SC 1052
[2] (2011) 13 SCC 236

Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[3]. When the said amount of Rs.27,000/- arrived towards contribution of the deceased to the family, is capitalized with the said multiplier, the loss of dependency works out to Rs.4,59,000/-. Since the deceased died at the age of 26 years, the petitioners are also entitled to future prospects at 50% in view of the law laid down by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4], which works out to Rs.2,29,500/- (Rs.4,59,000 x 50%). This apart, the petitioners are also entitled to a conventional sum of Rs.50,000/- as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[5].

Thus, the petitioners are entitled to a total sum of Rs.7,38,500/- (Rupees Seven lakh thirty eight thousand five hundred only), as against Rs.2,84,700/- granted by the Tribunal, towards compensation and the same is, accordingly, granted.

Though the compensation of Rs.7,38,500/- determined far exceeds the claim of Rs.5,00,000/-, there is no hindrance in awarding the same in view of the law declared by the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[6], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[7] and

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3 (2009) 6 Supreme Court Cases 121
4 2013 ACJ 1403
5 LAWS (SC) -2014-4-67
6 AIR 2003 SC 674
7 2012 ACJ 191 (SC)

Rajesh's case (4 supra). However, the petitioners are directed to pay Court fee on the excess amount within a period of three months from today to the credit of the O.P.

Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh'**s case (4 supra), the same rate of interest is maintained on the entire amount awarded from the date of petition till realization.

The enhanced amount is directed to be apportioned in proportion to the apportionment made to the petitioners by the Tribunal.

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.

JUSTICE A.SHANKAR NARAYANA

29th December, 2016
p v/v v