

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1596 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.68,240/- granted as compensation by the order dated 08.07.2004 in O.P. No.207 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for Trial of cases under S.Cs. & S.Ts. (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Muthamma, who was the mother of appellants-petitioners, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of auto rickshaw bearing registration No.AP 11W 2197, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 24.05.2002 at

about 2-30 p.m., while the said Muthamma (deceased) was travelling in an auto rickshaw bearing registration No.AP 11W 2197 along with her son towards Padalapally village and when the said auto rickshaw reached China Masanapally gate, since the driver of the auto rickshaw drove it in a rash and negligent manner, unable to control it, it resulted in turning upside down causing multiple injuries to her. She was shifted to Government Hospital, Gajwal, where she succumbed to the injuries while undergoing treatment. Concerned police also registered the case in Crime No.38 of 2002 for the offence punishable under Section 304-A IPC against the driver of the auto rickshaw.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer filed counter and opposed the claim raising various pleas, which, of course, are unnecessary to advert to in this appeal, since the appeal is preferred by the claimants.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident has taken place due to rash and negligent driving of the auto bearing No.AP 11W 2197 by its driver?

2. What is the just amount that can be awarded as compensation and against whom?

3. To what relief ?"

7. During enquiry, petitioner No.1 examined himself as P.W.1 besides examining one T.Shyamala as P.W.2 and marked Exs.A.1 to A.7 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy of the accident vehicle was marked as Ex.B.1 on consent.

8. The Tribunal, on analyzing the evidence let in by the petitioners, held issue No.1 in favour of the petitioners. On issue No.2 as to determination of compensation, the Tribunal has taken the age of deceased basing on Ex.A.5-postmortem examination report as 55 years and the annual income at Rs.18,000/- and by deducting $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses of the deceased and applying multiplier '4.27' in view of the decision of this Court in **Bhagwandas v. Mohd. Arif**^[1], worked out the loss of dependency at Rs.51,240/-. Besides the same, the Tribunal also granted Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus, the Tribunal granted a total sum of Rs.68,240/-, which was apportioned amongst the petitioners by granting interest at 6% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager sum and fixed the

income at Rs.18,000/- without any basis, though, she was a vegetable vendor and even an unskilled worker is getting Rs.3,000/- per month, and, thus, sought to grant balance amount.

10. Heard Sri T.Damodar, learned counsel for the appellants-petitioners. No representation on behalf of respondent No.2-Insurance Company. Appellants have endorsed in the cause title in the grounds of appeal that respondent No.1 is not a necessary party.

11. Perused the order and the evidence on record. The finding recorded by the Tribunal as to the age of the deceased as 55 years cannot be disturbed in view of the fact that the same is recorded in the postmortem examination report. So far as the earnings is concerned, the Tribunal has taken annual income of the deceased at Rs.18,000/- and deducted 1/3rd therefrom towards personal expenses of the deceased. However, 1/4th deduction is permissible as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[2], since claimants are four (4) in number and they were granted compensation for the services rendered by their mother. When the same is deducted, the contribution works out to Rs.13,500/- per annum. Relevant multiplier is '11' as per **Sarla Verma's** case (supra 2). Therefore, when the same

is applied, the loss of dependency works out to Rs.1,48,500/-. Besides the same, a conventional sum of Rs.50,000/- is granted in view of the decision of Hon'ble Apex Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**^[3].

12. Thus, the petitioners are entitled to a total sum of Rs.1,98,500/- (Rupees one lakh ninety eight thousand and five hundred) as against Rs.68,240/- granted by the Tribunal, towards compensation and the same is accordingly granted. However, petitioner Nos.1 to 3 are entitled to Rs.38,500/- each and petitioner No.4 is entitled to remaining amount of Rs.83,000/-. So far as the rate of interest is concerned, the Tribunal granted the same at 6% per annum and the same is enhanced to 7.5% per annum on the entire amount from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**^[4].

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

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

closed.

A. SHANKAR NARAYANA, J

19th January, 2016

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[\[1\]](#) 1987(2) ALT 137
[\[2\]](#) (2009) 6 SCC 121
[\[3\]](#) LAWS (SC) -2014-4-67
[\[4\]](#) 2013 ACJ 1403