HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1256 OF 2005

JUDGMENT:

On the ground that award of Rs.1,76,000/- towards compensation is very meagre and not just and adequate, as per the legal principles, seeking enhancement of the same, the petitioners preferred the instant appeal aggrieved by the order and decree, dated 24.02.2005 in M.V.O.P. No.657 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Guntur, under Sections 166 and 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellants herein, who are daughters and mother of one Brahmananda, who died in the accident, are petitioners (claimants) in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AAN-1739, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts would show that on 25.03.2000 at about 3.00 p.m., while Brahmanandam and others were

proceeding on the motorcycle bearing No.AP-7-J-3416 from Ponnur to Guntur, when they reached near Sai Baba Trust School on bypass road, since driver of the lorry came from behind while driving in a rash and negligent manner at high speed, hit the motorcycle, due to which he fell down and he was immediately shifted to Peoples Trauma Hospital, Kothapet,
Guntur, where, while undergoing treatment, he succumbed to injuries. The Station House Officer, Guntur Taluk Police Station, registered Crime No.98 of 2000 against driver of the lorry for the offence under Section 304-A of Indian Penal Code.

5. The petitioners, who are daughters and mother of the deceased, claiming that the deceased was doing business since ten (10) years in Cotton, Fertilisers and also owning land and pursuing agricultural operations, and was earning Rs.73,000/- per annum, and on account of his death, they lost their only bread winner and they suffered loss of future support, and therefore, sought to grant Rs.7,00,000/- towards compensation under Sections 166 and 163-A of the Motor Vehicles Act, 1988.

6. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte.*

7. Respondent No.2, insurer of the lorry, opposed the claim by raising various pleas.

8. The Tribunal, having framed three (3) issues, examined PWs.1 to 3, on behalf of the petitioners, and marked Exs.A-1 to A-17, while on behalf of respondents, no witnesses were examined and no documents were marked.

9. The Tribunal, having recorded finding in favour of the petitioners on issue No.1, proceeded with determination of compensation, but, somehow, overlooked the evidence of Branch Manager of Bank of Baroda, Nadendla, examined as PW.3 and also PW.2 and even the documentary evidence in the form of profit and loss account for the years 1997, 1998 and 1999 as well as tax assessment orders and even income tax PAN card, which are all marked as documents, more particularly, Exs.A-15 to A-17, still taken income of the deceased notionally at Rs.2,000/- per month and Rs.24,000/- per annum, deducted 1/3rd therefrom i.e. Rs.8,000/- (Rs.24,000/- x 1/3 = Rs.8,000/-), arrived at Rs.16,000/- (Rs.24,000/- - Rs.8,000/-) towards contribution of the deceased to his family, applied multiplier '11' taking the age of the deceased as 40 years as per Ex.A-2, inquest report, arrived at Rs.1,76,000/- (Rs.16,000/- x 11) towards loss of dependency and apportioned the same between all the petitioners with certain directions.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal has not appreciated the evidence on record in accordance with evidentiary rules and despite the evidence of PWs.2 and 3 and the documentary evidence showing income of the deceased as more than Rs.70,000/-, the Tribunal went wrong in taking the annual income of the petitioner at Rs.24,000/-, and therefore, sought to grant the balance amount.

11. Heard Sri A. Rajendra Babu, learned counsel for the petitioners (appellants), and Sri K. Sitaram, learned counsel for the insurer (respondent No.2).

12. Despite service of notice on respondent No.1, owner of the lorry, none appears on his behalf.

13. Perused the impugned order and the documentary evidence on record.

14. It is clear that even taking into account Exs.A-15 to A-17, which are proved through the evidence of PW.3 who is Branch Manager of Bank of Baroda, Nadendla, and stands unchanged and un-rebutted, and clearly shows that the deceased was regularly paying installments towards discharge of loan amount of Rs.5,00,000/- contracted from their branch, and, in that context, the profit and loss accounts for the years 1997, 1998 and 1999; perhaps the immovables are under

hypothecotation of the said bank, certainly, it has to be construed that the petitioner must be earning not less than Rs.40,000/- per annum, even giving credit to the payment of income tax, if any, as there is no material placed by the petitioners in that regard, and, thus, his earnings are fixed at Rs.40,000/- per annum. Since there are three petitioners, 1/3rd i.e., Rs.13,333/- therefrom has to be deducted towards personal expenses of the deceased and the remainder which works out to Rs.26,667/- is the contribution. When multiplier '15' is applied, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1]**,** as the deceased was 40 years old dispute, his contribution to the family works out to Rs.3,20,000/- (Rs.4,00,005/-) towards loss of dependency, which is rounded off to Rs.4,00,000/-

15. Besides the same, the petitioners are entitled to 50% thereof i.e., Rs.2,00,000/- (Rs.4,00,000/- x 50%) towards future prospects in view of the decisions of the Hon'ble Supreme Court in **Sarla Vermas's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[2] and, thus, the petitioners are entitled to Rs.6,00,000/- (Rs.4,00,000/- + Rs.2,00,000/-) towards loss of dependency.

16. Towards conventional sum, the petitioners are entitled to Rs.50,000/- in view of the decision of the

Hon’ble Surpeme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3].

17. Thus, the petitioners are entitled to a total compensation of Rs.6,50,000/- (Rupees six lakhs fifty thousand only) as against Rs.1,76,000 awarded by the Tribunal, and the same is accordingly awarded. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.1,76,000/- granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon’ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4], from the date of petition till realisation.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation,
as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 11, 2016.
PV

[1] (2009) 6 SCC 121

[2] 2013ACJ1403 = 2013(4)ALT35

[3] 2014 ACJ 1430

[4] 2013ACJ1403 = 2013(4)ALT35