

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2751 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.5,40,112/- granted as compensation by the order dated 15.04.2005 in M.V.O.P. No.685 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.9,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Neela Raju, who was the son of appellant No.1-petitioner No.1 and father of appellant No.2-petitioner No.2, 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 lorry bearing registration No.AAV 2203, 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 22.05.2000 at about 9-30 a.m., while the said Raju (deceased) along with his wife were proceeding on a motorcycle from Mutluru village to Guntur to celebrate their marriage day and when they reached near Budampadu, the driver of the lorry bearing registration No.AAV 2203 while coming in opposite direction driven in a rash and negligent manner at high speed dashed the motorcycle, due to which, both of them died instantly. Concerned Station House Officer also registered the case in Crime No.156 of 2000 against the driver of the accident vehicle. The petitioners, being mother and minor son of the deceased, claiming that the deceased was working as Head Master in RCM School at Vaikunthapuram and also undertaking tuitions along with his wife Suseela Rani, earning Rs.8,000/- per month at the time of accident and contributing the entire amount for maintenance of the family, sought a sum of Rs.9,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

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

"1. Whether the accident occurred due to rash and negligent driving of the driver of Lorry AAV 2203?

2. To what compensation the petitioners are entitled and from whom?

3. To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining the official from the school, in which the deceased was working, as P.W.2 and another witness as P.W.3 and marked Exs.A.1 to A.7 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence let in the petitioners, held issue No.1 in favour of the petitioners finding that the accident had occurred due to rash and negligent driving of the driver of lorry. On issue No.2, the Tribunal, considering the evidence of P.W.2 and the entries made in Ex.A.6, taken the gross salary of Rs.5,522/- per month and Rs.66,264/- per annum and deducted $\frac{1}{3}^{\text{rd}}$ therefrom towards personal expenses of the deceased, and taking the age of the deceased as 37 years, applied multiplier '12' and arrived loss of dependency at Rs.5,30,112/-. Besides the same, the Tribunal also granted a sum of Rs.10,000/- towards conventional figure on the capital of loss of estate, and,

thus, a total sum of Rs.5,40,112/- was granted to the petitioners with interest at 9% per annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record and the multiplier applied by the Tribunal was incorrect and relevant multiplier would be '16' in view of the catena of cases of the Hon'ble Supreme Court. It is also stated that the Tribunal has failed to take future prospects into consideration in determining the compensation and, therefore, sought to grant the balance amount.

10. No representation for the appellants. Though, respondent No.1 was served with notice, no representation for him. However, learned Standing Counsel for respondent No.2-Insurance Company has submitted his arguments. He fairly admitted that the multiplier applied by the Tribunal was not correct and the deceased had worked in RCM School is also not in dispute and, therefore, nothing else is required to adjudicate except to apply suitable multiplier for determination of compensation.

11. Perused the order and the evidence on record. As seen from the evidence of P.W.2 and Ex.A.6,

the deceased was drawing gross salary of Rs.5,522/- and the deductions to the tune of Rs.415/-. So far as the professional tax is concerned, Rs.20/- was deducted and Rs.20/- towards G.I.S. Therefore, the amount of Rs.40/- has to be deducted from the gross salary in assessing loss of dependency. In which case, monthly earnings of the deceased works out to Rs.5,482/-. P.W.2's evidence also would show that the salary projected in Ex.A.6 was the salary drawn by the deceased subsequent to pay revision. However, his evidence shows that he would have been another pay revision. Be that as it may, it is not in dispute that the Tribunal has not granted any amount towards future prospects, though, the deceased was doing in a permanent job. Therefore, the monthly income of the deceased is taken at Rs.5,482/- and the annual income comes to Rs.65,784/-. Since the petitioners are two in number, 1/3rd has to be deducted towards personal expenses of the deceased. When 1/3rd amount of Rs.21,928/- is deducted towards personal expenses, the contribution of the deceased to the family works out to Rs.43,856/-. Relevant multiplier for the age group of persons between 36 and 40 years, as the deceased was 37 years as on the date of accident, is '15' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**^[1]. When the multiplier '15' is applied to the

multiplicand, loss of dependency works out to Rs.6,57,840/-. Since no amount was granted by the Tribunal towards future prospects, in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1) and **Rajesh and others v. Rajbir Singh and others**^[2], the petitioners are entitled to additional amount @ 50%, which works out to Rs.3,28,920/-. So far as the conventional amount of Rs.10,000/- granted by the Tribunal is concerned, the same is confirmed.

12. Petitioners laid the claim for Rs.9,00,000/- only, but, certainly, they cannot be deprived of Rs.9,96,760/-, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**^[3], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[4] and **Rajesh's** case (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

13. Thus, the petitioners are entitled to a total sum of Rs.9,96,760/- (Rupees nine lakh ninety six thousand seven hundred and sixty) as against Rs.5,40,112/- granted by the Tribunal, towards compensation and the

same is accordingly granted. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today.

14. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and it is granted at 7.5% per annum on the enhanced amount from the date of petition till realization in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

15. Accordingly, the instant appeal is allowed 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.

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

A. SHANKAR NARAYANA, J

3rd February, 2016

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013 ACJ 1403

[\[3\]](#) AIR 2003 SC 674

[\[4\]](#) 2012 ACJ 191 (SC)