THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1400 of 2005

JUDGMENT:

The instant appeal is preferred by the parents of Yergadondla Nagamani, who died in a road accident, seeking enhancement of compensation on the ground that the award of Rs.1,54,500/- as compensation, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is on lower side. The aforesaid compensation was granted by the order dated 04.02.2005 in O.P.No.19 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge at Nizamabad (for short, 'the Tribunal').

2. The appellants herein are the parents of Yergadondla Nagamani (deceased), while respondent Nos.1 and 2, who are the owner and the insurer of the lorry bearing registration No. MH-26-7230, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the

Tribunal in the original petition.

4. The facts in brief are that on 08.10.1999, the deceased, who was 22 years old, was travelling in an auto bearing registration No.AP-25-T-6089 from Nizamabad towards Mopal side and, at about 7.00 p.m, when the said auto reached Pangra Boregaon bridge situate at Nizamabad-Hyderabad road, a lorry bearing registration No.MH-26-7230, driven at high speed in a rash and negligent manner, came on wrong side and dashed the auto, due to which, she received head injury and succumbed to injuries in the Government Headquarters Hospital, Nizamabad while undergoing treatment on the next day. The petitioners, being the parents of the deceased, claiming that their daughter died in unmarried status and she was a stone cutter assisting the family, though calculated the compensation at Rs.27,60,000/-, restricted their claim to Rs.3,00,000/- requesting to fasten the liability on both the respondents jointly and severally.

5. Before the Tribunal, respondent No.1-owner of the accident lorry remained *ex parte.* Respondent No.2-insurer opposed the claim by raising various pleas.

6. On the basis of the said pleadings, the

Tribunal has framed three issues. During enquiry, petitioner No.1 examined himself as P.W.1, besides examining an eye-witness as P.W.2 and marked Exs.A1 to A5; whereas, on behalf of Insurance Company, no witnesses were examined, but the copy of the Insurance policy was marked as Ex.B1.

7. The Tribunal, having analysed the evidence on record let in by the parties, recorded a finding that due to rash and negligent driving of the lorry driver, the accident had occurred and, accordingly, tendered finding on issue No.1 in favour of the petitioners. On issue No.2, the Tribunal has taken the notional income of the deceased as Rs.15,000/- per annum as provided in the Second Schedule to Section 163-A of the Act treating the deceased as non-earning member, deducted 1/3rd therefrom and applied multiplier "15" taking the age of the younger parent of the deceased as 45 years and arrived at Rs.1,50,000/- towards loss of dependency. Besides the said amount, the Tribunal also granted Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, and, thus, granted a total sum of Rs.1,54,500/- with interest at 9% per annum from the date of petition till realisation.

8. It is the aforesaid order which is questioned in the instant appeal filed by the parents of the deceased contending in the grounds that the Tribunal granted a meagre compensation and it ought to have taken the age of the deceased as 22 years recorded in the post-mortem report and ought not to have taken notional income of Rs.15,000/- per annum, as the deceased was working as a stone cutter-cum-labourer earning Rs.6,000/-, and even the amounts awarded towards funeral expenses and loss of estate are on lower side and, therefore, sought to grant the balance amount.

9. Heard Sri P.Radhive Reddy, learned counsel for the appellants-petitioners, and Sri N.J.Sunil Kumar, learned Standing counsel for respondent No.2-Insurance Company. Despite service of notice on respondent No.1-owner of the lorry, none appears for him.

10. Learned counsel for the appellants would submit that the Tribunal went wrong in taking the age of the mother of the deceased for applying the multiplying factor and placed reliance on the decision of the Hon'ble Supreme Court in **Munna Lal Jain and another v. Vipin Kumar and others**[1], to substantiate his submission that the age of the deceased has to be considered for

determining the multiplier, though died in unmarried status, and even 50% towards future prospects has to be added in working out the dependency and, therefore, sought to compute the compensation basing on the principles laid down by the Hon'ble Apex Court in **Munna Lal Jain**'s case (supra 1).

11. Learned counsel for respondent No.2-Insurance Company submits that the appellants-petitioners, being the parents, are not entitled to future prospects and the multiplying factor taken by the Tribunal cannot be faulted and, therefore, sought to maintain the order under challenge.

12. Perused the order and evidence on record, both, oral and documentary, let in by the parties. The Tribunal has taken notional income of the deceased at Rs.15,000/- per annum, as provided in the Second Schedule to Section 163-A of the Act, treating as a non-earning member, without assigning any reasons. In fact, the inquest report filed by the petitioners and marked as Ex.A4 would show against column no.2, in the description of the deceased, her occupation as stone cutter, besides showing agricultural labourer. Therefore, it cannot be said that the deceased was a non earning member and the Tribunal somehow, overlooked the said aspect, in which

case her income can be fixed at Rs.2,000/- per month, as the learned counsel has not placed any material to show what was the wages fixed in Minimum Wages Act for the relevant period. Since the deceased was in unmarried status, 50% of her monthly earnings has to be deducted towards her personal expenses, in which case her contribution to the family would work out to Rs.1,000/- per month or Rs.12,000/- per annum. Since the deceased was aged 25 years as on the date of accident as per the inquest report and no other evidence is placed on record by the petitioners to show that she was 22 years old at the time of accident, though it makes no difference, when considered in the light of the multiplying factor shown in the table by the Hon'ble Apex Court in **Sarla Varma & others v. Delhi Transport Corporation and another**[2], multiplier "17" has to be taken into consideration. When the same is applied, it works out to Rs.2,04,000/-. In view of the decision of the Hon'ble Supreme Court in **Munna Lal Jain's** case (supra 1), the petitioners are entitled to 50% towards future prospects, which works out to Rs.1,02,000/-, and the total dependency works out to Rs.3,06,000/-. Besides the said amount, the petitioners are also entitled to Rs.5,000/- towards funeral expenses, as against Rs.2,000/- granted by the Tribunal, and the amount of Rs.2,500/- granted by the Tribunal towards loss of estate is maintained.

13. The petitioners laid the claim for Rs.3,00,000/- and the

compensation determined exceeds their claim, but there is no prohibition to award the same in view of the ratio laid down in **Nagappa v. Gurudayal Singh and others**[3]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[4] and **Rajesh and others v. Rajbir Singh and others**[5]**.**

14. Thus, the petitioners are entitled to a total sum of Rs.3,13,500/- (Rupees three lakhs thirteen thousand and five hundred) as against Rs.1,54,500/- 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, to the credit of the O.P.

15. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation in view of

the decision of the Hon'ble Apex Court in **Rajesh's** case (supra 5).

16. Accordingly, the 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.

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

JUSTICE A.SHANKAR NARAYANA

11.02.2016
v v

[1] (2015) 6 SCC 347

[2] (2009) 6 SCC 121

[3] AIR 2003 SC 674

[4] 2012 ACJ 191 (SC)

[5] 2013 ACJ 1403