HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1407 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.1,40,400/- granted as compensation by the order dated 04.04.2005 in M.O.P. No.698 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short, 'the Tribunal') as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Bosa Apparao, who was the husband and father 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 lorry bearing registration No.AP 31X 2959, 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 04.06.2004, the said Bosa Apparao (deceased) along with other vegetable sellers started from Pataparadesipalem to go to

Visakhapatnam to sell vegetables and they were sitting on the divider of the road, during which time, a lorry bearing registration No.AP 31X 2959 driven at high speed in a rash and negligent manner dashed them and ran over the deceased, due to which, his both legs were crushed and he was shifted to K.G. Hospital, Visakhapatnam. Subsequently, he succumbed to the injuries. The dependants of the deceased laid claim for grant of Rs.3,50,000/- on the ground that the deceased was 45 years old and earning Rs.3,000/- per month on vegetable business.

5. Both the respondents filed counter opposing the claim. Respondent No.1 taken plea that respondent No.2-insurer is liable to pay compensation by way of indemnifying him.

6. Basing on the said pleadings, the Tribunal framed common issues about the responsibility for the accident in M.O.P. Nos.698 and 897 of 2004 and taken up common trial and disposed of both the claims by way of common order.

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides marking Exs.A.1 to A.4 to substantiate their claim; whereas, on behalf of the respondents, 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, the Tribunal taking the age of the deceased as 45 years and the income at Rs.1,500/- per month, deducted 1/3rd towards personal expenses of the deceased and taken Rs.12,000/- as the contribution to the family per annum, applying multiplier '10.45', arrived the loss of dependency at Rs.1,25,400/-. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium to petitioner No.1. Thus, the Tribunal granted a total sum of Rs.1,40,400/- with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal did not properly appreciate the evidence on record and without there being any basis, has taken the income at Rs.12,000/- per annum, and, therefore, sought to grant balance amount.

10. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellants-petitioners. No representation on behalf of respondent No.2-Insurance Company. None appears for respondent No.1-owner, despite service of notice.

11. Perused the order and the evidence on

record, both, oral and documentary, let in by the petitioners. The fact that the deceased was a vegetable vendor is not in dispute. That has been the reason the Tribunal has taken Rs.15,000/- per annum, but, of course, there is no tangible evidence. Even otherwise, since the accident occurred in the year 2004, it can safely be said that the average income of the deceased must have been around Rs.2,000/- per month. Therefore, the income is taken as Rs.2,000/- per month or Rs.24,000/- per annum and 1/3rd thereof is deducted towards personal expenses and the reminder of Rs.16,000/- is taken as contribution to the family. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1], multiplier '14' is applicable for the age group of 41 to 45 years. Therefore, when the multiplier '14' is applied to the multiplicand Rs.16,000/-, loss of dependency works out to Rs.2,24,000/-. It is not in dispute that the deceased was 45 years old and 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 amount of Rs.67,200/- is to be added additionally towards 30% of loss of dependency towards future prospects and a sum of Rs.50,000/- is also granted towards conventional amount in view of the decision of the Hon'ble Supreme Court in **Ramilaben**

Chinubhai Parmar Vs. National Insurance Company[3], as the Tribunal has not granted any amount towards loss of estate and funeral expenses and the amount granted towards loss of consortium is on lower side.

12. Thus, the petitioners are entitled to a total sum of Rs.3,41,200/- (Rupees three lakh forty one thousand and two hundred) as against Rs.1,40,400/- granted by the Tribunal, towards compensation and the same is accordingly granted. 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, but on the enhanced amount, rate of interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

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

25th January, 2016

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[1] (2009) 6 SCC 121

[2] 2013 ACJ 1403

[3] LAWS (SC) -2014-4-67