

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A. C.M.A. No.798 OF 2009**

**JUDGMENT:**

The appellants, who are petitioners (claimants) in M.V.O.P. No.1362 of 2001, preferred the instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree therein, dated 01.05.2006, whereby and whereunder, the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Guntur (for short "Tribunal"), granted an amount of Rs.1,10,000/- towards compensation with interest at 6% per annum, as against the claim of Rs.2,00,000/-, while dismissing the claim against the insurance company and fixing liability to pay the compensation only on the insured, owner of the vehicle that involved in the accident.

The petitioners in the present appeal are seeking enhancement of compensation and also to fix liability on the insurer also.

2. The appellants herein, who are wife and children of one Katari China Venkateswarlu (who died in the accident), are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP-21-U-599, 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 04.07.2001 at about

10.30 p.m., while Katari China Venkateswarlu along with another was returning to Narakoduru on TVS Moped bearing No.AP-7-F-2282, near Vadlamudi centre, a lorry bearing No.AP-21-U-599 was wrongly stationed on the road without any signal lights, facing towards Narakoduru side, in the dark night, due to which the deceased could not sight it and hit the lorry at its back portion, as a result, himself and another sustained fatal injuries all over their persons and immediately they were shifted to Government General Hospital, Guntur, for treatment where doctors declared Venkateswarlu as already dead.

In fact, the Station House Officer, Chebrole Police Station, registered a case in Crime No.58 of 2001 for the offence punishable under Section 304-A of Indian Penal Code.

Claiming that the deceased was earning Rs.3,600/- per month as mason (*tapi maistry*), petitioners sought to grant a sum of Rs.2,00,000/- towards compensation.

5. Respondent Nos.1 and 2 contested the claim by raising various pleas and also attributing negligence to the deceased stating that he has not taken precautionary

measures to avert taking place of the accident in hitting the lorry from its behind.

6. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

7. During enquiry before the Tribunal, on behalf of the petitioners, PWs.1 to 4 were examined and Exs.A-1 to A-6 were marked, whereas, on behalf of the respondents, RW.1 was examined and Exs.B-1 and B-2 were marked.

8. The Tribunal recorded a finding, on issue No.1, against respondent No.1, owner of the lorry, holding that the accident had occurred due to wrong parking of the lorry on the road by the driver of respondent No.1. On issue No.2, the Tribunal, disagreeing with the stand of the petitioners that he was earning Rs.120/- per day, taken his notional income at Rs.15,000/- per annum as provided under Schedule - II to Section 163-A of the Act, deducted 1/3<sup>rd</sup> therefrom towards his personal expense and applying multiplier '9' treating the age of the deceased as 45 years at the relevant time as per Ex.A-3 inquest report, arrived loss of dependency at Rs.90,000/-, besides granting Rs.10,000/- towards loss of consortium to petitioner No.1, wife of the deceased, and Rs.10,000/-

towards loss of estate, and, thus, granted a total sum of Rs.1,10,000/- towards compensation by dismissing the claim against the insurer, respondent No.2, and fixing liability on the owner of the lorry, respondent No.1, alone.

9. Admittedly, owner of the lorry has not preferred any appeal and there is no representation on his behalf.

10. Heard Sri B. Parameswara Rao, learned counsel for the petitioners (appellants), and Smt. V. Durga, learned counsel for the insurer.

11. With regard to determination of compensation, though the Tribunal has taken Rs.15,000/- as notional income of the deceased as provided in Schedule - II to Section 163-A of the Act, still, deduction has to be made as per the law declared by the Hon'ble Supreme Court. Keeping in view, that the deceased must have been working as mason (*Tapi Maistry*), by guess work, his income can be arrived at Rs.2,000/- per month or Rs.24,000/- per annum.

Since, dependants are numbering five (5),  $\frac{1}{4}$ <sup>th</sup> deduction is permissible towards his personal expenses i.e., Rs.6,000/- (Rs.24,000 x  $\frac{1}{4}$ ) in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**<sup>[1]</sup>. Thus, his contribution to the family works out to Rs.18,000/- (Rs.24,000/- - Rs.6,000/-)

per annum. The relevant multiplier for the age group of the deceased, who was 45 years old at the relevant time as per Ex.A-3 inquest report, is '14' in view of the decision in **Sarla Verma's Case** (Supra 1). When the same is applied, it works out to Rs.2,52,000/- (Rs.18,000/- x 14). The petitioners are also entitled to future prospects at 30% in view of the decision of the Hon'ble Apex Court in **Rajesh v. Rajbir Singh**<sup>[2]</sup>, which works out to Rs.75,600/-.

The petitioners are also entitled to Rs.50,000/- towards conventional sum as against Rs.20,000/- granted by the Tribunal in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**<sup>[3]</sup>.

12. Thus, the petitioners are entitled to a total compensation of Rs.3,77,600/- (Rupees three lakhs seventy seven thousand and six hundred only) as against Rs.1,10,000/- awarded by the Tribunal, and the same is accordingly awarded to the petitioners towards just and fair compensation as there is no bar to grant more than the claim amount in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**<sup>[4]</sup> **Sarla Verma's Case** (Supra 2), **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**<sup>[5]</sup> and **Rajesh and others**

**v. Rajbir Singh and others**<sup>[6]</sup>. The rate of interest granted by the Tribunal at 6% per annum from the date of petition till realisation is enhanced to 7.5% per annum in view of the decision in **Rajesh's Case** (Supra 6) even on the enhanced compensation as well. The petitioners are directed to pay court fee on the excess amount granted by this Court than the claim within a period of three (3) months from today.

13. Accordingly, the Civil Miscellaneous Appeal is allowed 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.

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**A. SHANKAR NARAYANA, J**

**July 26, 2016.**

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1. (2009) 6 SCC 121
  2. 2013ACJ1403 = 2013(4)ALT35
  3. 2014 ACJ 1430
- <sup>[4]</sup> AIR 2003 SC 674
- <sup>[5]</sup> 2012 ACJ 191 (SC)
- <sup>[6]</sup> 2013ACJ1403 = 2013(4)ALT35