HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2852 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,80,000/- towards compensation as against the claim of Rs.4,00,000/- laid under
Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioner No.1 preferred this Civil Miscellaneous Appeal against the order and decree, dated 09.09.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District and Sessions Judge, Medak at Sangareddy, in O.P. No.280 of 2004, seeking enhancement of compensation.

2. The appellant herein, who is father of Seri Chandrasekhar, who died in the accident, is petitioner No.1 in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.KA-38-2198 that involved in the accident, are respondent Nos.1 and 2, respectively, and respondent No.3, who is brother of the deceased, is petitioner No.2.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal and Seri Chandrasekhar, who died in the

accident as 'deceased.'

4(a) The facts, in brief, are that on 22-03-2004, while Seri Chandrasekhar was driving the auto-rickshaw bearing No.AP-23-V-1088 from Zaheerabad to Chelmadakalan Village, near the village limits of Digwal on National Highway - 9, lorry bearing No.KA-38-2198 came in opposite direction, driven by its driver in a rash and negligent manner, hit the auto-rickshaw, due to which, Chandrasekhar died instantly.

(b) A crime was registered by the Station House Officer,
Kohir Police Station in Crime No.40 of 2004 against the driver of the lorry for the offence punishable under Section 304-A IPC.

(c) Claiming that the deceased was unmarried, earning Rs.3,500/- per month by hiring the auto-rickshaw besides a daily batta of Rs.100/-, contributing the entire amount to the family, and they were dependants on the deceased, petitioners sought a sum of Rs.4,00,000/- towards compensation.

5. Respondent No.1, owner of the lorry involved in the accident, filed counter refuting the claim of the petitioners stating that the police have registered the case against the lorry driver, but also taken a plea that his lorry

was insured with respondent No.2 and is obliged to indemnify him and, thus, sought to dismiss the claim petition against him.

6. Respondent No.2, insurer of the lorry involved in the accident, opposed the claim by raising various pleas and sought to dismiss the claim against it.

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

8. During enquiry, petitioner No.1, father of the deceased, examined himself as PW.1 besides examining one Mohd. Baba, an eyewitness to the occurrence of accident, as PW.2 and marked Exs.A-1 to A-5. On behalf of the insurer, no witnesses were examined, but a copy of the insurance policy of the lorry involved in the accident was marked as Ex.B-1 on consent.

9. The Tribunal, having appraised the evidence on record, held issue No.1 in favour of the petitioners. On issue No.2, so far as dependency of petitioner No.2 is concerned, the Tribunal has not agreed with the petitioners, and determined the compensation taking the age of the deceased as 24 years and his wages at

Rs.75/- per day i.e., Rs.2,250/- per month and after deducting 1/3rd therefrom towards his personal expenses, taking the remainder i.e., Rs.1,500/- per month, which works out to Rs.18,000/- per annum, towards his contribution to his family, applying multiplier '10', arrived loss of dependency at Rs.1,80,000/- and, accordingly, granted the same to petitioner No.1, father of the deceased, alone with interest at 7.5% per annum.

10. The aforesaid order is under challenge in the instant appeal by the petitioners on the ground that the compensation awarded by the Tribunal is meagre and that the Tribunal ought to have considered the income of the deceased at Rs.3,500/- per month since his valid driving licence is filed, and, thus, sought to grant the balance amount.

11. Heard Sri C.V. Bhaskara Reddy, learned counsel for the petitioners (appellants), and Smt. I. Maamu Vani, learned counsel for the insurer.

12. The instant appeal against respondent No.1, owner of the lorry involved in the accident, was dismissed for default on 05-01-2012, however, the same makes no difference to decide the controversy herein since he suffered the decree having remained *ex parte* before the Tribunal.

13. Petitioner No.2, who is brother of the deceased and respondent No.3 herein, is shown in the cause title of the grounds of appeal as not a necessary party and his claim was dismissed by the Tribunal itself by assigning reasons holding that he was not a dependant on the deceased being his elder brother.

14. Learned counsel for the petitioner would submit that the deceased died in unmarried status and in view of the decision of the Hon'ble Apex Court in **Munnalal Jain and another v. Vipin Kumar Sharma and others**[1]**,** age of the deceased has to be taken into consideration for selection of multiplier and future prospects at 50% may be awarded since the deceased died at the age of 23 years. Learned counsel fairly submits that towards personal expenses 50% of the monthly income has to be deducted instead of 1/3rd in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2] and **Rajesh and others v. Rajbir Singh and others**[3]**.**

15. Learned standing counsel for the insurer would submit that the insurer has no dispute in regard to the legal principles laid down by the Hon'ble Supreme Court in the decisions relied on by the learned counsel for the petitioner.

16. So far as income of the deceased is concerned, there is no other tangible evidence to arrive at a different conclusion than the amount arrived at by the Tribunal. Therefore, the income of the deceased is taken at Rs.2,250/- per month and when 50% thereof is deducted towards personal expenses of the deceased since he died in unmarried status, his contribution to his family works out to Rs.1,125/- per month or 13,500/- per annum. Since the deceased was 25 years old at the relevant time as evident from Ex.A-3, certified copy of the inquest report, and Ex.A-4, post-mortem examination report, the relevant multiplier for his age group is '18' in view of the decision in **Sarla Verma's Case** (Supra 3) and when the same is applied to the multiplicand, it works out to Rs.2,43,000/- (Rs.13,500/- x 13). Since petitioner No.1 is construed as dependant on the deceased and there is no resistance from the insurer by preferring any appeal, petitioner No.1 is entitled to future prospects at 50% and the same works out to Rs.1,21,500/- (Rs.2,43,000/- x 50%). Thus, the total loss of dependency works out to Rs.3,64,500/- (Rs.2,43,000/- + Rs.1,21,500/-). Further, a sum of Rs.5,000/- is awarded towards funeral expenses.

17. Thus, petitioner No.1 is entitled to a total compensation of Rs.3,69,500/- (Rupees three lakhs sixty nine thousand and five hundred only) as against

Rs.1,80,000/- awarded by the Tribunal, and the same is accordingly awarded. He is entitled to interest on the amount granted by the Tribunal at 9% per annum, but on the enhanced compensation at 7.5% per annum, from the date of petition till realisation in view of the decision in **Rajesh's Case (Supra 3)**.

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

February 26, 2016.
PV

[1] (2015) 6 SCC 347
[2] (2009) 6 SCC 121
[3] 2013ACJ1403 = 2013(4)ALT35