THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1848 of 2009

JUDGMENT:

The instant appeal is preferred by the erstwhile Andhra Pradesh State Road Transport Corporation represented by its Depot Manager, Vizianagaram Depot, and the Managing Director, Musheerabad, Hyderabad, which are respondent Nos.2 and 3 in M.O.P.No.380 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Vizianagaram (for short, 'the Tribunal'), mainly on the ground that, though, the claim was only for Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Surya Rao, who is the husband of petitioner No.1, father of petitioner No.2 and the son of petitioner Nos.3 and 4, the Tribunal granted compensation of Rs.6,97,000/-, by the award and decree dated 24.10.2007, passed in the said original petition, and, thereby, sought to modify the said order reducing the compensation amount.

2. The appellants herein are respondent Nos.2 and 3, while respondent Nos.1 to 4 herein, who are the wife, son and parents of the deceased, are petitioner Nos.1 to 4, respectively, in the original petition.

3. Since the fact situation is not disputed by both

sides, elaborating the same is dispensed with.

4. Heard Sri S.V.Ramana, learned Standing Counsel for the Corporation appearing for the appellants, and Sri Venkateswara Rao Gudapadi, learned counsel for respondent Nos.1 to 4. Respondent No.5 herein, who is respondent No.1 before the Tribunal, is shown as not a necessary party in the cause title of the Memorandum of appeal, since he was the driver of the Corporation who caused the accident.

5. The Tribunal has taken the age of the deceased as 23 years, applied multiplier factor '17', as per the Second Schedule to Section 163-A of the Act, and taken annual income of the deceased at Rs.60,000/- @ Rs.5,000/- per month on the ground that he was earning the same by making food items and selling them, as against the stand of the petitioners that he was earning Rs.10,000/- per month, and, by deducting 1/3rd there from towards living expenses, taken the remaining amount of Rs.40,000/- as contribution to the family and arrived at Rs.6,80,000/- towards loss of dependency. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, and, thus, awarded a total compensation of Rs.6,97,000/- with interest at 6% per annum.

6. The main submission of the learned Standing

Counsel for the appellants is that the Tribunal was not right in taking the monthly earnings at Rs.5,000/- without there being legally acceptable evidence on record and should have taken Rs.3,000/- per month as notional income, as there is no material on record to show the earnings.

7. The learned counsel for respondent Nos.1 to 4 – petitioners supported the order under challenge.

8. It appears, the present appeal is preferred on two counts, firstly, assessing the monthly earnings at Rs.5,000/- and, second, awarding the compensation more than the amount claimed.

9. Perused the order and material on record.

10. Concerning the number of dependants, there has been change in law in view of the decisions rendered by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] and **Rajesh and others v. Rajbir Singh and others**[2]. In the present case, the dependants are four in number. Even if monthly earnings of the deceased are taken at Rs.3,000/- and 1/4th is deducted there from towards personal expenses and multiplier '18' is applied, as the age of the deceased was taken as 23 years, the loss of dependency would work out to slightly less than five lakhs and apart

from this, towards future prospects, the petitioners would be entitled to 50% of the loss of dependency assessed as per the decision in **Rajesh**'s case (2 supra), and if the same is added and also the conventional sum, the compensation exceeds seven lakhs. In that view of the matter, certainly, it has to be held that there is no merit in the appeal.

11. Touching the submission that the compensation of Rs.6,97,000/- determined by the Tribunal exceeds the claim of Rs.6,00,000/-, there is no embargo to award the same in arriving at just and adequate compensation 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).

12. Accordingly, the instant appeal is dismissed, confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

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

JUSTICE A.SHANKAR

NARAYANA

19.08.2016

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[1] (2009) 6 SCC 121

[2] 2013 ACJ 1403

[3] AIR 2003 SC 674

[4] 2012 ACJ 191 (SC)