

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.263 of 2009

JUDGMENT:

The present appeal is preferred by the petitioners-claimants in O.P.No.758 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Warangal (for short, 'the Tribunal'), aggrieved by the award and decree dated 11.09.2008, passed in the said O.P., granting compensation of Rs.1,86,500/- with interest at 7.5% per annum as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'), on the ground that the compensation awarded is very meager and, thereby, sought enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 to 3 herein were respondent Nos.1 to 3, 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, would show that, on 28.11.2004, one Venkat Reddy (deceased), the husband of petitioner No.2 and incidentally, the son of petitioner No.1 and father of petitioner Nos.3 and 4, was returning to his

house at Hanamkonda, having visited his brother's house at Rekula Village of Kodakandla Mandal, on a two-wheeler (Hero Honda) bearing registration No. AP 37 G 5256 and when he reached Naidu's Petrol Pump at about 9.30 p.m., he dashed a lorry bearing registration No.ABK 8469, which was wrongly parked on the middle of the road without parking lights switched on or even the rear right side lights switched on, due to which, he received head injury and injuries to other parts of his person. He was immediately shifted to M.G.M. Hospital, Warangal, where he succumbed to injuries on the intervening night of 28/29.11.2004. Claiming that the deceased was working as Warden in S.R. Junior College, Hanamkonda earning Rs.6,000/- per month and that, due to the accident, they lost their bread earner, the petitioners sought a sum of Rs.6,00,000/- as compensation.

5. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal. Respondent No.3 – insurer opposed the claim, but no contravention was pleaded.

6. The Tribunal, basing on the pleadings of the parties, framed four issues on 22.11.2006.

7. During enquiry, petitioner No.2 examined herself as P.W.1, besides examining an eyewitness as P.W.2 and the Principal of S.R. College, Hanamkonda, as P.W.3, and marked Exs.A1 to A5. On behalf of the Insurance Company,

no witnesses were examined and no documents were marked.

8. On analyzing the evidence of P.W.2 and Exs.A1 to A5, the Tribunal held that there was negligence on the part of the driver of the lorry who parked the lorry wrongly occasioning the taking place of the accident. On issue No.2, the Tribunal, having dealt with the evidence of P.W.3, the Principal of S.R. College, Hanamkonda, did not believe his evidence and excluded Ex.A3 – salary certificate said to have been issued by him by assigning certain reasons, and then taken notional income of the deceased at Rs.15,000/-, as provided in the Second Schedule to Section 163-A of the Act, made deduction at 1/3rd therefrom and applied multiplier '17', considering the age of the deceased as 34 years, and arrived at Rs.1,70,000/- towards loss of dependency. Besides the said amount, the Tribunal also granted Rs.2,500/- towards loss of estate, Rs.5,000/- towards pain and suffering, as the deceased suffered due to the injuries for some time after the accident, Rs.5,000/- towards loss of estate for petitioner No.2, which ought to have been towards loss of consortium, Rs.2,000/- towards funeral charges and Rs.2,000/- towards transport and other miscellaneous expenditure, and, thus, the Tribunal granted a total sum of Rs.1,86,500/- with interest at 7.5% per annum from the date of petition till realisation.

9. Dissatisfied, the present appeal is preferred mainly contending that the Tribunal went wrong in not accepting the contents of Ex.A3, which was proved through the evidence of P.W.3, and the Tribunal was not right in just discarding Ex.A3 and excluding the evidence of P.W.3 merely observing that P.W.3 has not filed the service record of the deceased and, therefore, sought to grant the balance amount.

10. Heard Sri Ajay Kumar, learned counsel representing Sri J.Venkateswara Reddy, learned counsel for the appellants. Service was completed on respondent Nos.1 to 3, but none appears for any of the respondents, including the Insurance Company arrayed as respondent No.3, which is the National Insurance Company Limited represented by its Branch Manager, Vijayawada.

11. Learned counsel for the petitioners (appellants) would submit that the Tribunal was not right in rejecting the evidence of P.W.3 and Ex.A3 and, therefore, requested to determine fair and adequate compensation by accepting the evidence of P.W.3 and the contents of Ex.A3.

12. Perused the order and evidence on record.

13. The Tribunal has recorded the reasons in excluding Ex.A3, stating that the Principal of S.R. College, in which the deceased was working, has not brought the service record of the deceased and, therefore, the contents

of Ex.A3 are of no use to the petitioners in seeking the compensation amount claimed by them and, on the other hand, the Tribunal has taken the notional income of the deceased at Rs.15,000/- per annum as provided in the Second Schedule to Section 163-A of the Act. Be that as it may, when the Principal of S.R. College himself has stepped into the witness box and given evidence and when there is nothing adverse in the cross-examination of P.W.3 as regards his identity, certainly, his evidence cannot be brushed aside on the mere ground that he has not brought the service record of the deceased. Even otherwise, the Principal has stated in his evidence that the employees of his College were contributing amount towards Provident Fund. However, Ex.A3 - the salary certificate said to have been issued by P.W.3 does not disclose such particulars, but it only shows that the deceased was drawing consolidated pay of Rs.5,350/-. In such event and in the absence of relevant particulars in Ex.A3, it is difficult to rely on such document and determine the compensation based on that document. However, the salary or the income of the deceased can be taken at Rs.3,500/- per month or Rs.42,000/- per annum. Since the dependants are numbering four, 1/4th is permissible to be deducted towards personal expenses and, as such, after deducting the same, the remaining 3/4th, which works out to Rs.31,500/-, can be taken as the contribution to the family. When 50% thereof is

added towards future prospects as per the decision of the Hon'ble Supreme Court in **Munna Lal Jain and another v. Vipin Kumar and others**^[1], it works out to Rs.47,250/- per annum (Rs.31,500 + 15,750/-). Though, the age of the deceased is mentioned as 36 years in the complaint given by his brother, the Tribunal has taken his age as 34 years, in the absence of production of any documents in proof of his age, such as service register, school certificate etc. However, since the age of the deceased is shown as 36 years in the inquest report marked as Ex.A4, the same can be taken into consideration, for which the multiplier applicable is '15' as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[2]. When the same is applied to the multiplicand, the loss of dependency works out to Rs.7,08,750/- (Rs.47,250 x 15) and the same is awarded accordingly. Besides the said amount, an amount of Rs.50,000/- is granted towards conventional sum, as against Rs.5,000/- granted towards loss of estate for the second petitioner, which ought to have been towards consortium, Rs.2,500/- towards loss of estate, Rs.5,000/- towards pain and suffering, Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transport and other miscellaneous expenditure granted by the Tribunal.

14. The petitioners laid the claim for Rs.6,00,000/-

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].

15. Thus, the petitioners are entitled to a total sum of Rs.7,58,750/- (Rupees Seven lakh fifty eight thousand seven hundred and fifty only), as against Rs.1,86,500/- granted by the Tribunal, towards compensation and the same is, accordingly, granted. Interest at 7.5% per annum granted by the Tribunal is maintained on the entire amount awarded from the date of petition till realisation.

16. Accordingly, the instant 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, shall stand closed.

**JUSTICE A.SHANKAR
NARAYANA**

28.07.2016
v v

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- [\[1\]](#) (2015) 6 SCC 347
- [\[2\]](#) (2009) 6 SCC 121
- [\[3\]](#) AIR 2003 SC 674
- [\[4\]](#) 2012 ACJ 191 (SC)
- [\[5\]](#) 2013 ACJ 1403