HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2671 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.3,92,500/- as compensation by the order dated 05.04.2005 in O.P. No.783 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Kanna Sudershan, who was the husband of appellant No.1 and father of appellant Nos.2 and 3, 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 the auto-rickshaw bearing registration No.AP 25/U 1255, 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 17.05.2002, the said Kanna Sudershan (deceased) was travelling in an

auto-rickshaw bearing registration No.AP 25/U 1255 from Pachalanadkuda village to Mupkal and when the auto-rickshaw reached the outskirts of Govindpet village, since the driver drove it in a rash and negligent manner at high speed, it dashed an RTC bus, which was parked by the side of the road, due to which, the deceased received serious injuries and succumbed to the injuries on the same day. The petitioners, claiming that the deceased was aged 45 years, an agriculturist and canvassing agent, earning Rs.20,000/- per month and contributing the same to the family, sought a sum of Rs.10,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the auto-rickshaw.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining one S.Naresh-eyewitness to the accident as P.W.2 and marked Exs.A.1 to A.12 to substantiate their claim; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. On appraisal of evidence on record, both, oral

and documentary, let in by the petitioners, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, having examined Exs.A.10, A.11 and A.12, found that the deceased was owning

Acs.8-33 guntas of land at Mupkal village, but disbelieved the certificate issued by the Mandal Revenue Officer in Ex.A.10, which shows that the deceased was getting Rs.2,00,000/- per annum. The Tribunal, thus, taken the earnings of the deceased as Rs.30,000/- per annum and age as 45 years and by taking contribution to the family at Rs.25,000/- per annum and applying multiplier ‘15’ as per the Second Schedule of Section 163-A of the Act, arrived the loss of dependency at Rs.3,75,000/- (Rs.25,000/- x 15). Besides the same, a sum of Rs.15,000/- is granted towards consortium and Rs.2,500/- towards funeral expenses making a total of Rs.3,92,500/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not determined compensation on proper lines and even stated that the relevant multiplier was not applied and, therefore, sought to grant the balance amount.

9. Heard Sri K.M. Mahender Reddy, learned counsel for the appellants. No representation for respondent No.2-Insurance Company. Despite service of

notice on respondent No.1-owner, none appears for him.

10. It is no doubt true that the Tribunal has not indicated as to what was the percentage that was deducted towards personal expenses, but, however, has taken Rs.25,000/- as the annual income, discarded Ex.A.10 and the finding recorded by the Tribunal in rejecting Ex.10 cannot be upset as it is well reasoned since the Mandal Revenue Officer has not given relevant details in arriving at the income of the deceased at Rs.2,00,000/- per annum. However, as regards future prospects, the Tribunal has not granted any amount. In view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1], the petitioners are entitled to 30% additionally, as the deceased was 45 years old as on the date of accident. Towards future prospects, when the amount of Rs.3,75,000/- is taken as the loss of dependency, 30% thereof works out to Rs.1,12,500/-. Besides the same, as against Rs.15,000/- and Rs.2,500/- granted by the Tribunal towards loss of consortium and funeral expenses respectively, a sum of Rs.50,000/- is granted towards conventional amount.

11. Thus, the petitioners are entitled to a total sum of Rs.5,37,500/- (Rupees five lakhs thirty seven thousand and five hundred) as against Rs.3,92,500/- 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 and interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 1).

12. Accordingly, the instant appeal is allowed in part 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.

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

A. SHANKAR NARAYANA, J

1st April, 2016

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[1] 2013 ACJ 1403