HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1721 OF 2009

JUDGMENT:

Respondent No.2 - M/s. ICICI Lombard General Insurance Company Limited, Banjara Hills, Hyderabad, is the present appellant.

2. On two main grounds, the insurer got aggrieved over the order and decree, dated 21-01-2009, in M.V.O.P. No.523 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge, Warangal (for short 'the Act'), whereby and where-under, a sum of Rs.6,11,000/- was granted as compensation as against the claim of Rs.20,00,000/- laid under Section 166 (1) (c) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicle Rules, 1989, for the death of one Kalloori Devendra Chary, preferred the instant appeal under Section 173 of the Act; firstly, in relation to negligence on the ground that the deceased - Kalloori Devendra Chary contributed to the accident which the Tribunal did not properly appreciate. The second, on quantum of compensation.

3. Respondent No.5 and the appellant herein, who are owner and insurer of tractor and trailer bearing Nos.AP 36N 7040 and 7041, are respondent Nos.1 and 2, respectively, while respondent Nos.1 to 4, who are wife, children and mother of deceased - K. Devendra Chary, are the petitioners in the MVOP before the Tribunal.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the MVOP.

5. The facts would show that on 02-02-2007, one Kalloori Devendra Chary, was proceeding on a motorcycle along with his cousin brothers towards Ingurthy village and when they reached outskirts of Nellikudur, a tractor and trailer bearing registration Nos.AP 36N 7040 and 7041 driven by its driver in a rash and negligent manner at high speed came in opposite direction and hit them, due to which, he received grievous injuries and while he was being shifted to Hospital, he succumbed to injuries. The petitioners being his legal heirs as wife, children and mother laid the claim petition for the aforesaid amount.

6. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.2, insurer of the vehicle, opposed the claim by filing a counter.

8. The Tribunal having framed issues and examined the relevant witnesses and marked relevant documents on behalf of the petitioners and even on behalf of the Insurance Company, recorded findings in favour of the petitioners. However, while determining compensation, the Tribunal has taken the monthly income of the deceased at Rs.6,000/-, deducted 1/3rd there-from and applied

multiplier '12' taking the age of the deceased as 40 years basing on the decision of this Court in **Bhagwandas v. Mohd. Arif**[1] and assessed the loss of dependency at Rs.5,76,000/-. Besides the same, the Tribunal granted Rs.15,000/- towards loss of consortium, another sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, thus, making a total of Rs.6,11,000/- as against the claim of Rs.20,00,000/- made by the petitioners, and awarded interest at 7.5% per annum therein.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company.

10. Heard Sri Ravi Shankar Jandhyala, learned standing counsel for the appellant - respondent No.2. None appears for respondent Nos.1 to 4 - petitioners and on respondent No.5 - respondent No.1, though, service was completed.

11. At the outset, it is to be stated that there is no merit in the present appeal for the reason if the law declared by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[2] and **Rajesh and others v. Rajbir Singh and others**[3] is applied, certainly, 1/4th deduction is permissible since petitioners - claimants are numbering '4' and relevant multiplier would be '14', besides the petitioners' entitlement 30% additionally

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1. 1987 (2) ALT 137
2. (2009) 6 Supreme Court Cases 121
3. 2013 ACJ 1403

towards future prospects, in which case, it would far exceed the compensation granted by the Tribunal.

12. Therefore, holding that there is no merit, the present appeal is dismissed, confirming the order and decree passed by the Tribunal in all respects. No order as to costs.

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

A. SHANKAR NARAYANA, J

August 23, 2016.
Mgr