

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.3093 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.6,25,000/- towards compensation as against the claim of Rs.11,00,000/- laid under

Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioners preferred this Civil Miscellaneous Appeal against the order and decree, dated 12.09.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District and Sessions Judge, Medak at Sangareddy, in O.P. No.563 of 2004, seeking enhancement of compensation.

2. The appellants herein, who are wife, children and parents of Vidyanand, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the DCM Van bearing No.AP-9-U-6892 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4(a) The facts, in brief, are that on 27-07-2004, while Vidyanand was proceeding as pillion rider on a motorcycle ridden by G. Narsimulu Goud towards Budhera village from Sadasivpet, and reached near Aroor village, a DCM Van bearing No.AP-9-U-6892 came from opposite direction, driven by its driver in a rash and negligent manner, hit the motorcycle, due to which, Vidyanand and rider of the motorcycle sustained severe injuries and died instantly.

(b) The Station House Officer, Sadasivpet Police Station, registered a case in Crime No.183 of 2004 against the driver of the DCM Van for the offence punishable under Section 304-A IPC.

(c) Claiming that the deceased was 25 years old at the relevant time, working in MRF Company at Sadasivpet, drawing a monthly salary of Rs.7,300/- and contributing the entire amount for necessities of the family, laid the claim for Rs.11,00,000/- against the respondents.

5. Respondent No.1, who is owner of the DCM Van involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry, opposed the claim by raising various pleas.

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

8. During enquiry, petitioner No.4, father of the deceased, examined himself as PW.1 besides examining one Sadasividu, an eyewitness to the occurrence, as PW.3 and M.D. Krupadhan, Manager of the MRF Company, as PW.2 to prove earnings of the deceased, and marked Exs.A-1 to A-9. On behalf of the insurer, no witnesses were examined, but a copy of the insurance policy of the DCM Van involved in the accident was marked as Ex.B-1 on consent.

9. On issue No.1, the Tribunal, relying on the evidence of PW.3, an eyewitness to the occurrence, supported by documentary evidence through Exs.A-1, A-2 and A-4, copy of the first information report, charge sheet and Motor Vehicle Inspector's Report, respectively, held that due to rash and negligent driving of the driver of DCM Van, the accident had taken place and, accordingly, recorded the finding in favour of the petitioners.

10. On issue No2, taking the age of the deceased as 30 years since his date of birth is recorded as 21-06-1974 in his S.S.C. certificate marked as Ex.A-8, determined the multiplier as '16.51', but, later fixed it at '16' placing reliance on the decision of this Court in

Bhagwandas v. Mohd. Arif^[1] and **General Manager,**

Kerala SRTC v. Susamma Thomas^[2]. Concerning

monthly earnings of the deceased, placing reliance on the entries in Ex.A-7, pay slip, for the month of April, 2004 and the evidence of PW.2, Manager of the MRF Company, Sadasivpet, Medak District, employer of the deceased, taking his net salary at Rs.4,881/- and having deducted 1/3rd therefrom i.e., Rs.1,627/- (Rs.4,881/- - 1/3), taking the remainder i.e., Rs.3,254/- towards his monthly contribution to his family, which works out to Rs.39,048/- per annum, by applying multiplier '16', arrived at Rs.6,24,768/- towards loss of dependency, and, besides the same, granted Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate, however, somehow, while totalling the compensation after rounding off Rs.6,24,768/- to Rs.6,25,000/-, awarded only Rs.6,25,000/- instead of Rs.6,55,000/- with interest at 7.5% per annum placing reliance on the decision in [2005 (1) SC 395].

11(a). As seen from the evidence of PW.2 and Ex.A-7 pay slip of the deceased for the month of April, 2004 and Ex.A-9 pay slip of June, 2004, after excluding certain allowances such as washing allowance, second shift and night shift allowances, current month overtime allowances, the deceased must be drawing Rs.6,595-75

paise per month. When professional tax of Rs.80/- is deducted therefrom since the same is a statutory deduction, it works out to Rs.6,515-75 paise (Rs.6,595-75 paise - Rs.80/-). Thus, monthly earnings of the deceased can be fixed at Rs.6,515-75 paise as against Rs.4,881/- fixed by the Tribunal towards net salary and the same is rounded off to Rs.6,516/-.

(b) So far as age of the deceased is concerned, the Tribunal has taken the same as 30 years based on the entry in his S.S.C. certificate marked as Ex.A-8. So far as deduction towards personal expenses is concerned, since petitioners are five in number as dependants, $\frac{1}{4}$ th is permissible in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation** ^[3]. Accordingly, when $\frac{1}{4}$ th i.e. Rs.1,629/- (Rs.6,516/- x $\frac{1}{4}$) is deducted from the monthly earnings of Rs.6,516/-, it works out to Rs.4,887/- (Rs.6,516/- - Rs.1,629/-) per month or Rs.58,644/- per annum towards contribution of the deceased to his family.

(c) For the age group of the deceased, who was 30 years at the relevant time, the multiplier provided in the decision in **Sarla Verma's Case** (Supra 3), is '17'. When the same is applied to the multiplicand, it works out to Rs.9,96,948/- (Rs.58,644/- x 17) towards loss of dependency.

(d) Since the deceased was a confirmed employee as per the evidence of PW.2, the petitioners are entitled to future prospects at 50%, in view of the decisions in **Sarla Verma's Case (Supra 3)** and **Rajsh and others v. Rajbir Singh and others**^[4], and the same works out to Rs.4,98,474/- (Rs.9,96,948/- x 50%). Thus, the petitioners are entitled to a total sum of Rs.14,95,422/- (Rs.9,96,948/- + 4,98,474/-) towards loss of dependency.

(e) Further, the petitioners are entitled to Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[5].

12(a). Thus, the petitioners are entitled to a total compensation of Rs.15,45,422/- (Rupees fifteen lakhs forty five thousand and four hundred and twenty two only) as against Rs.6,25,000/- (*Sic.* Rs.6,55,000/-) awarded by the Tribunal, and the same is accordingly awarded, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh & others**^[6] **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**^[7] and **Rajesh and others v. Rajbir Singh and others**^[8], wherein it is held that

there is no prohibition to grant just and reasonable compensation arrived at, though, the same exceeds the amount claimed, with interest at 7.5% per annum on the entire compensation, affirming the rate of interest granted by the Tribunal, placing reliance on the decision in **Rajesh's Case** (Supra 8), from the date of petition till realisation. The enhanced compensation shall be apportioned between the petitioners as directed by the Tribunal.

(b) The petitioners are directed to pay Court fee on the excess amount granted by this Court than the amount claimed by them within a period of three (3) months from today.

13. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 29, 2016.

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[\[1\]](#) 1987 (2) ALT 137

- [\[2\]](#) AIR 1994 SC 1631
- [\[3\]](#) (2009) 6 SCC 121
- [\[4\]](#) 2013ACJ1403 = 2013(4)ALT35
- [\[5\]](#) . 2014 ACJ 1430
- [\[6\]](#) AIR 2003 SC 674
- [\[7\]](#) 2012 ACJ 191 (SC)
- [\[8\]](#) 2013ACJ1403 = 2013(4)ALT35