HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1523 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants/petitioners, aggrieved by the order and decree dated 22.02.2005, passed in O.P.No.1115 of 2001 by the Chairman, Motor Accident Claims Tribunal (I Additional District Judge), Nizamabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.4,27,200/- was awarded towards compensation with interest at 9% per annum, as against the claim of Rs.8,00,000/-, made under Section 166 (1)(c) of the Act, for the death of one Inampudi Muralikrishna in a road accident that occurred on 09.05.2001 in the sivar of Gutpa village on Nizamabad-Armoor road, seeking enhancement of compensation.

2. The appellants are petitioners, respondent No.1 – owner of the offending lorry bearing No.AP 21T 4334 is respondent No.1, and respondent No.2 – National Insurance Company Limited is respondent No.2, in O.P.No.1115 of 2001. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.1115 of 2001 before the Tribunal.

3. The facts, in brief, are that on 09.05.2001, the deceased - Inampudi Muralikrishna was going to Nizamabad from

Armoor by driving Tata Estate Car bearing No.AP 9J 8889 and at about 10-30 p.m., when he reached the sivar of Gutpa village on Nizamabad-Armoor road, a lorry tanker bearing No.AP 21T 4334, driven by its driver in a rash and negligent manner, came from opposite direction and dashed against the car, in which the deceased was travelling, due to which the car was completely damaged and the deceased received crush injuries and died on the spot. The police concerned of Makloor Police Station registered a case in Crime No.63/2001 for the offence punishable under Section 304-A IPC against the driver of the offending lorry tanker. Petitioner Nos.1 to 4, being wife, father, mother and son, respectively, of the deceased, filed a claim petition seeking compensation of Rs.8,00,000/-, stating that the deceased was doing Hotel business and earning Rs.10,000/- per month.

4. Before the Tribunal, the 1st respondent – owner of the offending lorry remained exparte, and the 2nd respondent – insurer alone contested the claim, raising usual pleas in its counter, without there being any specific plea.

5. Basing on the pleadings of the rival parties, the Tribunal framed three issues in order to determine the amount of compensation as well as liability for the accident.

6. During enquiry, the 1st petitioner, who is the wife of the deceased, examined herself as P.W.1, besides examining

P.Ws.2 and 3, who are eye witnesses to the incident, and marked Exs.A.1 to A.8. On behalf of the 2nd respondent - insurer, none were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence on record, while recording a finding on issue No.1 in favour of the petitioners, even held that the deceased contributed to the accident to the extent of 20% negligence, on the premise that he was not holding a valid driving licence, at the relevant time.

8. On issue No.2, the Tribunal, having taken the age of the deceased as 30 years, at the time of death, and his income at Rs.3,500/- per month or Rs.42,000/- per annum, after deducting 1/3rd towards his personal living expenses, taken the reminder Rs.28,000/- towards contribution to the family and, applying the multiplier '18', perhaps, based on the entry in II-Schedule to Section 163-A of the Act, arrived the loss of dependency at Rs.5,04,000/-. That apart, the Tribunal has granted a sum of Rs.15,000/- towards consortium to the 1st petitioner, Rs.5,000/- towards transport and funeral expenses, and Rs.10,000/- towards loss of estate, thus, making a total compensation of Rs.5,34,000/-. Further, after deducting 1/5th therefrom i.e., Rs.1,06,800/- (Rs.5,34,000/- x 1/5 = Rs.1,06,800/-) towards contribution of the deceased for the accident, arrived at a sum of Rs.4,27,200/- towards compensation, to which the petitioners are entitled, with

interest @ 9% per annum, from the date of petition till realisation, and apportioned the said amount amongst five dependents, perhaps, under the impression that there were five petitioners, though, in fact, there are four petitioners only, as follows:

1st petitioner	:	Rs.1,87,200-00
2nd petitioner	:	Rs. 60,000-00
3rd petitioner	:	Rs. 60,000-00
4th petitioner	:	Rs. 60,000-00
5th petitioner	:	Rs. 60,000-00

9. The aforesaid order and decree are under challenge in the present Civil Miscellaneous Appeal, on the ground that the Tribunal has granted a meagre sum towards compensation.

10. Heard Sri P. Radhive Reddy, learned counsel for the appellants/petitioners, as well as Sri Sai Gangadhar Chamarthi, learned counsel for the 1st respondent – owner of the offending lorry, and Sri K. Sitaram, learned Standing Counsel for the 2nd respondent – insurer.

11. Perused the order under challenge and evidence available on record.

12. Learned counsel for the appellants/petitioners would contend that the Tribunal went wrong in recording a finding that the deceased contributed to the accident and deduction of 1/5th towards the same from the amount arrived at

towards loss of dependency, on the mere ground that the deceased was not holding a valid driving licence at the relevant time, just basing on the suggestion made to the wife of the deceased is unjust and liable to be set aside.

13. It is true, if there is any violation on the part of the deceased, certainly, the burden rests on the 2nd respondent – insurer to prove such violation. In fact, no specific plea has been raised by the 2nd respondent – insurer in its counter, touching the aspect of the deceased not holding a valid driving licence, at the time of accident. Even otherwise, just basing on the suggestion made to the wife of the deceased, the Tribunal cannot arrive at a conclusion that the deceased contributed to the accident. In fact, whenever negligence is assumed, while apportioning the liability, certainly, the Tribunal is bound to examine the rough sketch of scene of occurrence and the scene of occurrence panchanama and the other material available on record, which the Tribunal has not done so, in the instant case. Therefore, that finding of the Tribunal has to be construed as not in accordance with evidential rule and based on improper appreciation of evidence and not well reasoned, thereby warranting interference.

14. Accordingly, the finding of the Tribunal, to the extent of holding that "since the deceased also contributed to the accident by driving the vehicle without holding any valid

driving licence, one fifth of the awarded compensation has to be deducted from the total compensation", is set aside.

15. Turning to the question, whether the compensation granted by the Tribunal is just and adequate, the Tribunal determined the amount of compensation basing on the law then prevailing, more particularly, multiplier factor '18' was taken from II-Schedule to Section 163-A of the Act. No doubt, the petitioners claimed that the deceased was earning Rs.10,000/- by doing Hotel business, but, no documentary evidence, in that regard, is forthcoming, except Ex.A.5 – Permission letter issued by G.P., Armoor. Therefore, the Tribunal arrived at the earnings of the deceased as Rs.3,500/- per month and accordingly, determined the loss of dependency.

16. Now, turning to the multiplier factor '18', applied by the Tribunal, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1], for the age group of 26 to 30 years, the relevant multiplier factor is '17', and when the amount of Rs.3,500/- per month taken towards earnings of the deceased, it works out to Rs.42,000/- per annum. According to the very same decision, 1/4th deduction is permissible, since the dependents of the deceased are 4, in number. If 1/4th is deducted towards personal living expenses

[1] (2009) 6 Supreme Court Cases 121

of the deceased from his annual income of Rs.42,000/-, the remaining amount of Rs.31,500/- would constitute towards contribution of the deceased to the family and if the same is multiplied by the relevant multiplier '17', the loss of dependency works out to Rs.5,35,500/-.

17. As already observed above, since the finding of the Tribunal as regards the contributory negligence of the deceased is set aside, by applying the law declared by the Hon'ble Apex Court in **Sarla Varma's** case (supra 1) and **Rajesh and others v. Rajbir Singh and others**[2], in addition to the loss of dependency, the petitioners are entitled to 50% towards future prospects, keeping in view the age of the deceased as 30 years. Thus, 50% of the loss of dependency of Rs.5,35,500/- would work out to Rs.2,67,750/- towards future prospects. Thus, the petitioners are entitled to a sum of Rs.8,03,250/-.

18. This apart, the petitioners are also entitled to a sum of Rs.50,000/- towards conventional sum as against Rs.30,000/- granted by the Tribunal, in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar vs. National Insurance Company**[3]. Thus, the petitioners are entitled for a total compensation of Rs.8,53,250/- (Rs.8,03,250/- + Rs.50,000/-).

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[2] 2013 ACJ 1403
[3] LAWS (SC) -2014-4-67

19. Petitioners laid the claim for Rs.8,00,000/- only, but, certainly, they cannot be deprived of the compensation of Rs.8,53,250/-, now determined, though, it exceeds the claim made by them, in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's** case (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim made by them, within a period of three months from today.

20. Thus, the petitioners are entitled to a total compensation of Rs.8,53,250/-, as against the compensation of Rs.4,27,200/- granted by the Tribunal. The enhanced amount of Rs.4,56,050/- shall carry interest @ 7.5% per annum in view of the decision of the Hon'ble Supreme Court in Rajesh's case (supra 2). The compensation of Rs.8,53,250/- shall be apportioned amongst the petitioners as follows:

1st petitioner	:	Rs.3,53,250-00
2nd petitioner	:	Rs.1,00,000-00
3rd petitioner	:	Rs.1,00,000-00
4th petitioner	:	Rs.3,00,000-00

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[4] **AIR 2003 SC 674**
[5] **2012 ACJ 191 (SC)**

21. In case, the 4th appellant/petitioner – son is still minor, the amount apportioned towards his share shall be deposited in an interest yielding Fixed Depot, till he attains majority.

22. Accordingly, the Civil Miscellaneous Appeal is allowed, enhancing the amount of compensation from Rs.4,27,200/- to Rs.8,53,250/- (Rupees eight lakhs fifty three thousand two hundred and fifty only) with interest at 7.5% per annum on the enhanced amount of Rs.4,26,050/- (Rupees four lakhs twenty six thousand fifty only), while maintaining interest @ 9% per annum granted by the Tribunal on the amount awarded by it, from the date of the petition till the date of realization. No order as to costs.

23. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

22.08.2016.
Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1523 of 2009

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