HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1964 OF 2009

JUDGMENT:

On the ground that the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Kurnool (for short 'Tribunal'), has not properly assessed the compensation to which the petitioners are entitled in the direction of just and adequate compensation as per the statutory principle, and granted only Rs.5,91,388/- through the order and decree, dated 10.01.2007, as against the claim of Rs.11,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant Civil Miscellaneous Appeal is preferred by the petitioners seeking to grant balance amount.

2. The appellants herein, who are wife, children and parents of one K. Rangaswamy, 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 lorry bearing registration No.AP-02-V-2682 that involved in the accident, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The fact-situation occurring in the instant case is not in dispute.

5. The only dispute is in regard to permissible deduction towards personal living expenses, application of suitable multiplier factor, grant of future prospects and fixing the age of the deceased on the ground that the Tribunal even logically went wrong in considering the age of the deceased as '45' years showing the mother's age of the deceased as '55' years, which aspects have been already decided by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1] and **Rajesh and others v. Rajbir Singh and others**[2]**.**

5(a). In the grounds of appeal, the petitioners sought grant of total compensation on the ground that age of the deceased was wrongly taken as '45' years and to correct the multiplier factor applied by the Tribunal on the basis of Schedule - II to Section 163-A of the Act.

6. Heard Sri J. Janakiram Reddy, learned counsel for the petitioners (appellants), and Sri C. Prakash Reddy, learned counsel for the insurer - respondent No.2.

7. In the grounds of appeal itself, it is recorded that respondent No.1, owner of the lorry that involved in the accident, is not a necessary party, and, therefore, notice was not issued to him.

8. Perused the order and decree under challenge and the material on record both, oral and documentary, let in by the petitioners.

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1. (2009) 6 SCC 121

9. The Tribunal, on the ground that S.S.C. Certificate of the deceased was not produced by the petitioners and ages of parents of the deceased were shown as ‘63’ and ‘55’ years, respectively, on a hypothetical process, fixed age of the deceased as ‘45’ years as on the date of his death; somehow, the official examined as PW.3, officer-cum-Disbursement Officer of Battallion - II, A.P.S.P., Kurnool, appears to have not brought the Service Register, which would have clinched the controversy.

10. Be that as it may, the police records, which are copies of the First Information Report, Inquest Report and Charge Sheet, would show the age of the deceased as ‘38’ years at the time of his death, as such, age of the deceased is taken as ‘38’ years as against ‘45’ years taken by the Tribunal.

11. Concerning salary, Tribunal has taken net salary shown in Ex.A-6, salary certificate of the deceased for the month of April 2005, being Rs.6,351/- for the purpose of calculation of compensation, deducted 1/3rd i.e., Rs.2,117/- therefrom basing on the decision of this Court in 2006 (6) ALT 214, and taking the remainder, Rs.4,234/- towards his contribution to the family, applying multiplier factor ‘11’ as laid down by this Court in **Bhagwandas v. Mohd. Arif** (1987 ACJ 1052) arrived at Rs.5,58,888/- towards loss of dependency besides Rs.15,000/- towards loss of consortium, Rs.7,500/- towards loss of expectation of life, Rs.7,500/- towards pain and suffering and loss of

[2] 2013ACJ1403 = 2013(4)ALT35

amenities and Rs.2,500/- towards funeral expenses, making a total of Rs.5,91,388/-.

12. A perusal of Ex.A-6 and Ex.X-1 would show that the deceased was drawing a gross salary of Rs.6,910/-. Towards professional tax, a sum of Rs.20/- was deducted. Further amounts under deductions column relate to contributions. Therefore, only Rs.20/- can be deducted from the gross salary towards professional tax, which means, an amount of Rs.6,890/- would be the salary of the deceased for the purpose of computation of compensation. Since the dependants are numbering 5, as can be seen from the cause title and also the order apportioning the compensation amongst five petitioners, $1/4^{th}$ i.e., Rs.1,722/- (Rs.6890/- x ¼) is permissible towards deduction of personal and living expenses of the deceased, and when the same is deducted, contribution of the deceased to his family works out to Rs.5,168/- (Rs.6,890/- - Rs.1,722/-) per month and Rs.62,016/- per annum. The relevant multiplier factor for the age group of the deceased, who was 38 years old at the time of his death, is '15' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1), and when the same is applied, the loss of dependency works out to Rs.9,30,240/- (Rs.62,016/- x 15). In view of the law declared by the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) and **Rajesh's Case** (Supra 2), the petitioners are entitled to 50% out of loss of dependency towards future prospects and the same works out to Rs.4,65,120/- (Rs.9,30,240/- x 50%). Thus, towards loss

of dependency including future prospects, the petitioners are entitled to Rs.13,95,270/- (Rs.9,30,240/- + Rs.4,65,120/-). As against the conventional sums granted by the Tribunal, a sum of Rs.50,000/- is granted as approved by the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3].

13. Thus, the petitioners are entitled to a total compensation of Rs.14,45,360/- (Rupees fourteen lakhs forty five thousand three hundred and sixty only) as against Rs.5,91,388/- awarded by the Tribunal, and the same is accordingly granted in view of the decisions of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh & others**[4] **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's Case** (Supra 2), wherein it is held that there is no prohibition to grant just and reasonable compensation arrived at, though, the same exceeds the amount claimed. The petitioners are directed to pay deficit Court fee on Rs.3,45,360/- (Rupees three lakhs forty five thousand three hundred and sixty only) within a period of three (3) months from today. However, the rate of interest granted by the Tribunal at 7.5% per annum is since in accordance with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2), the same is maintained on the entire compensation from the date of petition till realisation.

3. 2014 ACJ 1430

14. 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.

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

A. SHANKAR NARAYANA, J

August 30, 2016.

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