

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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CMA.No.1878 of 2004

JUDGMENT:

Having got dissatisfied with the award of Rs.5,30,000/- as compensation by the order dated 28.01.2004 in O.P.No.618 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal'), as against the claim of Rs.15,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one N.Brahmeshwara Rao, who was the father of appellant Nos.1 and 2/petitioner Nos.1 and 2 and incidentally the son of appellant Nos.3 and 4/petitioner Nos.3 and 4, respectively, 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, who are the owner and insurer of the lorry bearing registration No.PY-01-Q-5769, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts in brief are that on 17.01.2002, while the said Brahmeshwara Rao (deceased) along with his wife was proceeding on his scooter bearing registration No.AP-28-AB-4882 from their village K.Takkallapadu of Naguluppapadu Mandal, Prakasam District and when they reached Sambunivagu Cheruvu Brige at about

7.00 a.m in the outskirts of Elchur Village of Santhamagulur Mandal of Medarametla-Nakrikal Road, a lorry bearing registration No.PY-01Q-5769, driven in a rash and negligent manner, came in opposite direction and dashed the scooter, due to which, both of them fell down and ran over and died instantly. The petitioners, being children and parents of the deceased, sought Rs.15,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim and also reserved its right to agitate its defences available under Section 170 of the Act by obtaining the relevant orders from the Tribunal.

6. The Tribunal has framed three issues basing on the pleadings put forth by the parties in order to determine the liability as well as the compensation to which the petitioners are entitled. During enquiry, on behalf of the petitioners, petitioner No.3 examined himself as P.W.1 besides examining one D.Jayarami Reddy, an eyewitness to the occurrence, as P.W.2, and marked Exs.A1 to A12. On behalf of respondent No.2, no witnesses were examined, but the copy of insurance policy was marked as Ex.B1 on consent.

7. The Tribunal, having believed the evidence of P.W.2 supported by Exs.A1 to A5, recorded a finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred and, thus, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, referring to the contents of Exs.A7 to A10, the salary certificate and the original income tax challans and returns, fixed the salary at Rs.48,000/- per annum and, by deducting 1/3rd there from towards personal expenses, taken the remaining 2/3rd i.e., Rs.32,000/-

(Rs.48,000 x 2/3) per annum as the contribution of the deceased to the family and, considering the age of the deceased as 37 years, applied multiplier '16' and arrived at Rs.5,12,000/- towards loss of dependency (Rs.32,000 x 16). Besides the said amount, the Tribunal has also granted Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transport charges, and, thus, the Tribunal awarded a total sum of Rs.5,30,000/- towards compensation with interest at 9% per annum from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal filed by the petitioners seeking enhancement of compensation contending in the grounds that the Tribunal granted a meagre compensation, without properly appreciating the evidence on record.

9. Heard Sri Padmalatha Yadav, learned counsel for the appellants, and Srinivasa Rao Vutla, learned counsel for respondent No.2.

10. Though notice was not served on respondent No.1, it makes no difference for the reason that respondent No.1 suffered a decree and admittedly there was valid Insurance Policy at the relevant time.

11. Perused the order and evidence on record both, oral and documentary, let in by the parties. As seen from the documents Exs.A7 to A12, the salary is varying, but however, the Tribunal has taken the salary of the deceased as Rs.48,000/- per annum basing on the entries in computation statements for the years 2000-01 and 2001-02 and deducted 1/3rd towards personal expenses. Since the

dependants are numbering four, $\frac{1}{4}^{\text{th}}$ has to be deducted towards personal expenses, in view of the decision of Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], and the same would work out to Rs.12,000/- (Rs.48,000 x $\frac{1}{4}$). When the said amount of Rs.12,000/- is deducted from Rs.48,000/-, the contribution of the deceased to the family works out to Rs.36,000/- (Rs.48,000 – 12,000). The relevant multiplier is “15” as per the very same decision of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1), which is applicable, instead of multiplier “16” applied by the Tribunal. Therefore, when multiplier “15” is applied, the loss of dependency works out to Rs.5,40,000/-. The petitioners are also entitled to 50% additionally on the amount worked out towards loss of dependency in view of the decision of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1) and **Rajesh and others v. Rajbir Singh and others**^[2], and the same works out to Rs.2,70,000/- (5,40,000 x 50%). Besides the same, the petitioners are also entitled to Rs.50,000/- as against the amount of Rs.18,000/- granted towards conventional amount in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**^[3].

12. Thus, the petitioners are entitled to a total sum of Rs.8,60,000/- (Rupees eight lakhs sixty thousand), as against Rs.5,30,000/- granted by the Tribunal, towards compensation and the same is accordingly granted.

13. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount of Rs.5,30,000/- granted by the Tribunal, and on the enhanced

amount, the petitioners are entitled to interest at 7.5% per annum from the date of petition till realisation as per the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

14. 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.

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

JUSTICE A.SHANKAR NARAYANA

18.03.2016
v v

[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013 ACJ 1403

[\[3\]](#) LAWS (SC) -2014-4-67