HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4042 OF 2004

JUDGMENT:

United India Insurance Company Limited, Madanapalle, represented by its Branch Manager, which is respondent No.2 in M.V.O.P. No.116 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Chittoor (for short, 'the Tribunal'), aggrieved by the order dated 05.07.2004, whereby and whereunder, the Tribunal awarded a sum of Rs.4,38,000/- with interest at 9% per annum as against the claim of Rs.20,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one D.Venkata Subba Reddy in a road accident, preferred the instant appeal under Section 173 of the Act challenging the quantum of compensation on the ground that the same is arbitrary and excessive when kept in view, the age of the deceased as 60 years and even the income of the deceased fixed by the Tribunal at Rs.24,000/- per annum as excessive.

2. Appellant herein is respondent No.2, while respondent Nos.1 to 3 herein, who are wife and children of the deceased in this case, are the petitioners and respondent No.4 herein, who is the owner of the car bearing registration No.AP 16M 1477, is respondent No.1

in the original petition.

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

4. The facts in brief are that on 09.12.1998 at about 5-30 p.m., when the said D.Venkata Subba Reddy (deceased) met with an accident when he stopped his car bearing registration No.AP 26A 6966 on the left side of the road near Karnipalle bus stop on Chittoor-Tirupati road to attend calls of nature, during which time, another car bearing registration No.AP 16M 1477 coming from Tirupati driven in a rash and negligent manner, dashed him, due to which, he sustained injuries and while he was being shifted to the hospital, he succumbed to injuries. Concerned police also laid charge sheet in C.C. No.340 of 1998 on the file of IV Additional Judicial Magistrate of First Class, Chittoor, against the driver of the car bearing registration No.AP 16M 1477. The petitioners, claiming that the deceased was a contractor-cum-agriculturist earning Rs.20 lakhs per annum, sought a total sum of Rs.20 lakhs as compensation.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim mainly on the ground that the claim

was bad for non-joinder of insured and insurer of the car belonging to the deceased.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining three other witnesses as P.Ws.2 to 4 and marked Exs.A.1 to A.19 to substantiate their claim; whereas, on behalf of respondent No.2, no witnesses were examined and no documents were filed.

7. On appraisal of evidence let in by the petitioners, the Tribunal held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal has taken into consideration the documentary evidence, more particularly, Exs.A.7, A.8 and A.17, and taking the earnings of the deceased at Rs.24,000/- per annum from agriculture and Rs.1,00,000/- from contract works, deducted 1/3rd of the same towards personal expenses and worked out the contribution of the deceased to the family at Rs.82,667/- and taking the age of the deceased as 60 years, applied multiplier '5' and arrived the loss of dependency at Rs.4,13,335/-. Besides the same, the Tribunal also granted a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards loss of consortium, and, thus, granted a total sum of Rs.4,38,000/- with interest at

9% per annum while dismissing the claim petition against petitioner Nos.2 and 3 as they were not dependents on the deceased.

8. It is the aforesaid order which is under challenge in the instant appeal mainly on the ground that the Tribunal ought not to have taken income of the deceased at Rs.24,000/- from agricultural supervisory loss in the absence of any documentary evidence and fixing income at Rs.1,00,000/- per annum without there being an income tax return was also not correct and, therefore, sought to set aside the order and decree under challenge.

9. Heard Sri A.V.K.S. Prasad, learned Standing Counsel for respondent No.2 (appellant-Insurance Company). No representation for petitioner No.2 (respondent No.2 herein). The instant appeal was dismissed against petitioner Nos.1 and 3 and respondent No.2-owner (respondent Nos.1, 3 and 4 herein) on 03.02.2011 for default. In fact, decree was passed in favour of petitioner No.1-wife (respondent No.1 herein) dismissing the claim petition against petitioner Nos.2 and 3 (respondent Nos.2 and 3 herein). Even otherwise, the same would not affect the rights of petitioner No.1-wife in entitling her for the amount already granted by the Tribunal. Though, the instant appeal against respondent No.1-owner of the vehicle (respondent No.4 herein) was

dismissed for default, but he suffered decree by remaining *ex parte* before the Tribunal, and, therefore, his absence in the instant appeal makes no difference in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1].

10. Learned Standing Counsel for respondent No.2 (appellant-Insurance Company) submits that in view of the change in decisional law, more particularly, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation and another**[2], multiplier '9' is applicable as provided in the table formulated therein, and, therefore, the challenge to the quantum of compensation loses its significance. It is also his submission that interest be reduced from 9% to 7.5% per annum in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**[3].

11. There is merit in the submission made by the learned Standing Counsel for respondent No.2-Insurance Company. Hence, keeping in view that multiplier '9' is applied and addition of 50% of the loss of dependency arrived at has to be added in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's** case (supra 2)

and **Rajesh's** case (supra 3), the award of Rs.4,38,000/- as compensation cannot be held to be arbitrary or excessive and, therefore, the order under challenge is confirmed. However, concerning rate of interest, the Tribunal granted the same at 9% per annum. The same is reduced to 7.5% per annum on the entire amount of compensation from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh's** case (supra 3).

12. Accordingly, the instant appeal is partly allowed reducing the rate of interest, as indicated above, while maintaining the order in all other respects so far as the quantum of compensation. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

1st March, 2016

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[1] 2001(1) ALT 495 (D.B.)

[2] (2009) 6 SCC 121

[3] 2013 ACJ 1403