

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2602 OF 2009

JUDGMENT:

Questioning the whole liability fixed on the Insurance Company viz., the New India Insurance company Limited, in O.P. No.885 of 2006, by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Nalgonda through the order and the decree dated 04.02.2009, whereby and whereunder, an amount of Rs.8,25,500/- was granted towards compensation for the death of one Nagamalleshwara Rao, who is the husband of respondent No.1, father of respondent Nos.2 and 3 and son of respondent Nos.4 and 5, preferred the instant Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, on the main ground that there was collision between the two vehicles, as such, the liability ought to have apportioned between the owner and insurer of the two vehicles co-extensively.

2. The fact-situation is not disputed by the learned counsel for the Insurance Company (appellant) Sri Naresh Byrapaneni.

3. Though, respondent Nos.1 to 5 (petitioners – claimants), entered appearance, there is no representation on their behalf.

4. Despite service of notice on respondent No.6, owner of the Jeep bearing No.AP-29-T-1554 that involved in the accident, none appears for him.

5. The Tribunal, based on the evidence of PWs.1 to 3 and Exs.A-1 to A-6, held issue No.1 in favour of the petitioners holding that due to rash and negligent driving of the driver of the jeep, the accident occurred resulting in the death of the deceased travelling in the car.

6. While appreciating the evidence on record, in determining compensation on issue no.2, the Tribunal, though, did not agree with the contents in Ex.A-5, on the premise that PW.3 has not brought any other records in support of issuance of salary certificate under Ex.A-5, however, observing that not less than Rs.6,000/- would be the income of the deceased and the same can safely be presumed, arrived at Rs.72,000/- per annum, deducted 1/3rd towards his personal living expenses and taking the age of the deceased as 33 years as per the entry in Ex.A-3, postmortem examination report, applied multiplier factor '17', though, ought to have applied '16', as per the law declared by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹, perhaps based on the entries in Schedule - II to Section 163 - A of the Motor Vehicles Act, 1988, and arrived at Rs.8,16,000/- towards loss of dependency besides awarding Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.5,000/- towards

loss of consortium to petitioner No.1 and, thus, making a total of Rs.8,25,000/- towards compensation, awarded the same with interest at 7.5% per annum,

7. The learned Standing Counsel for the Insurance Company, though, submits that the Tribunal ought to have taken notice of the fact that there was direct collision between the jeep and the car, in which, the deceased was travelling, and thereby to view contributory negligence on the part of the car driver; however, fairly concedes that no witnesses were examined on behalf of the Insurance Company.

8. When looked at the documentary evidence let in by the petitioners, the scene of offence panchanama, of course, not marked, onus is on the Insurance Company to get these documents marked to arrive at which of the drivers driving the vehicles that involved in the accident were at fault and contributed to the accident. In the absence of the same, certainly, there is no merit in the said submission.

9. Turning to determination of compensation, it is no doubt true, the learned counsel for the Insurance Company would submit that the Tribunal ought not to have presumed the monthly income of the deceased at Rs.6,000/-, when the Tribunal did not agree with the evidence of PW.3 as noted in Ex.A-5.

10. But, on perusal of Ex.A-5, certainly, genuinity or authenticity of which cannot be doubted and there is no reason to discard the evidence of PW.3 on the ground that no other documents were produced by PW.3, who was an executive in Gowtham Educational Academy.

11. Thus, viewed from any angle, there is no merit. However, the petitioners would have also become entitled to more than what was granted by the Tribunal, in case, the law declared by the Hon'ble Supreme Court in **Sarla Verma¹** and **Rajesh and others v. Rajbir Singh and others²** is applied.

12. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 30, 2016.
PV

² 2013ACJ1403 = 2013(4)ALT35