HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.746 OF 2009

JUDGMENT:

Opining that the compensation of Rs.1,99,000/- granted by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Ranga Reddy District at L.B. Nagar (for short 'the Tribunal'), by the order and decree, dated 07-07-2006, in M.O.P.649 of 2003, as not just and fair compensation to which petitioners entitled, since they laid claim for grant of Rs.5,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of their son, in an unmarried status, the petitioners preferred the instant appeal under Section 173 of the Act seeking enhancement.

2. The appellants herein are the petitioners, while respondent Nos.1 to 3, who are owner, insurer and driver of lorry bearing registration No.AP-28-5678, respectively, are arrayed as respondents as such in MOP before the Tribunal.

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

4. The facts that are necessary for disposal of the

present appeal are; the son of the petitioners - S.M. Santhosh Kumar, aged 23 years, was proceeding on his bicycle from ECIL Cross roads to Kushaiguda on 30-09-2002, and at about 10.30 a.m., when he reached vegetable market, a lorry bearing registration No.AP 28 5678 driven by respondent No.3 in a rash and negligent manner at high speet belonging to respondent No.1, insured with respondent No.2, dashed him, due to which, he sustained serious injuries and succumbed to them.

i) An eye-witness to the occurrence lodged the complaint with Station House Officer, Kushaiguda Police Station, and Crime No.438 of 2002 was registered against the lorry driver.

ii) The petitioners claiming that their deceased son, aged 23 years on the date of accident, working as Fitter in M/s. Autolac Divya Engineering, drawing a monthly salary of Rs.4,000/- and simultaneously was prosecuting computer education in D.T.P. and hardware course in C-Shell Software Training and Solutions, sought the aforesaid sum on the ground that he had very bright prospects and on account of his death, they are unable to meet their both ends.

5. Respondent Nos.1 and 3, who are owner and driver of the lorry, respectively, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry, opposed the claim raising various pleas, which, of course, are unnecessary to refer to as no specific violation of terms and conditions of policy, was raised.

7. The Tribunal has framed three issues on the basis of the pleas put forth by the parties.

8. During inquiry, petitioner No.1 examined himself as PW.1. Besides, he has also examined an eye-witness as PW.2, the proprietor of M/s. Autolac Divya Engineering as PW.4, one Ch. Ganesh Kumar, an employee in C-Shell Software Trailing and Solutions as PW.3, and marked Exs.A-1 to A-11 and Exs.X-1 to X-5. On behalf of respondent No.2, no witnesses were examined, but copy of certificate of insurance with duplicate schedule in respect of accident lorry is marked as Ex.B-1 on consent.

9. The Tribunal on appreciation of evidence on record, recorded a finding on issue No.1 that, due to rash and negligent driving of respondent No.3, the accident had occurred resulting in the death of S.M. Santhosh Kumar.

10. Touching determination of compensation, placing reliance on the decisions of the Hon'ble Supreme Court to resort to structural formula arrived at, that the appropriate multiplier would be '13' as the mother of the

deceased, who is the younger parent, the petitioner No.2 herein was 40 years old on the date of accident. Having deliberated on the income of the deceased as Rs.4,000/- per month, working as Fitter in M/s. Autolac Divya Engineering and analyzing the evidence of PW.4, did not agree with the stand of the petitioners in view of the admissions made by PW.4 in his cross examination that he did not file any returns before the Labour Department and did not bring copies of income tax returns and further, observing that he did not file any accounts or acquittance register or vouchers evidencing the payment of salary to the deceased, then considered the evidence of PW.3, who was authorized to speak on behalf of M/s. C-Shell Software and Trailing Solutions, and the Tribunal has taken annual income at Rs.21,000/- on a reasonable bypothesis instead of Rs.15,000/- provided in the II Schedule to Section 163-A of the Act; deducted 1/3rd i.e. Rs.7,000/- towards personal expenses of the deceased and the balance of Rs.14,000/- as annual loss of dependency and applying multiplier ‘13’ arrived at Rs.1,82,000/- under the head ‘loss of dependency’. A convensional sum of Rs.15,000/- under the head ‘loss of estate’ and Rs.2,000/- under the head ‘funeral and other expenses’ have been awarded by the Tribunal, making a total sum of Rs.1,99,000/- as compensation and granted simple interest at the rate of 7.5% per annum thereon, making respondent Nos.1 to 3 jointly and severally liable to pay the said amount.

11. Dissatisfied with the said amount, the petitioners preferred the instant appeal contending in the grounds that the Tribunal, somehow, overlooked the evidence of PW.4 despite the fact that Ex.A-8 issued by PW.4 would prove that the deceased was earning Rs.4,000/- per month. It is also stated that the Tribunal ought to have taken multiplier factor as ‘18’ instead of ‘13’ in view of the decision of the Hon’ble Supreme Court and ought to have awarded Rs.50,000/- under the head ‘loss of estate, funeral and other expenses’ and that the interest at 12% per annum ought to have granted in palce of 7.5% and, thus, sought to grant balance amount.

12. Heard Sri Surendra Desai, learned counsel for the appellants - petitioners, and Sri P. Phalguna Rao, learned standing counsel for respondent No.2 - Insurer. It is mentioned in the cause title of grounds of appeal that respondent Nos.1 and 3 are not necessary parties as they were remained *ex parte* before the Tribunal.

13. Perused the order and the material on record.

14. The learned counsel for the appellants would submit that though, PW.4’s evidence is sufficient enough to prove that the deceased was earning Rs.4,000/- per

month as a Fitter in M/s. Autolac Divya Engineering concern, the certificate of employment issued by the authorized signatory as in Ex.A-8 supporting the same, still, the Tribunal went wrong in excluding Ex.A-8 and the evidence of PW.4, merely because Exs.X-1 to X-5 were filed and PW.3's evidence showing that the deceased was pursuing hardware course in
M/s. C-Shell Software and Trailing Solutions and, therefore, it is his submission that the Tribunal ought to have accepted Rs.48,000/- as the annual income and ought to have taken appropriate multiplier suiting the age of the deceased and even in addition thereto, grant the amounts towards future prospects basing on the judgments of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] and **Rajesh and others v. Rajbir Singh and others**[2].

15. The learned standing counsel for the insurer, on the other hand, would submit that though, the Tribunal has not accepted the evidence of PW.3 even, but, still, fixed the notional income at Rs.21,000/- as per the II Schedule to Section 163-A of the Act, thus, he supports the award of compensation determined by the Tribunal.

16. The reasons assigned by the Tribunal in

refusing to accept the evidence of PW.4 cannot be faulted. In case the deceased was really employed in M/s. Autolac Divya Engineering when PW.4 in the capacity of its authorized signatory was stepped into witness box, ought to have taken care to see that the accounts maintained in running the business and acquittance register or vouchers under which the salary said to have paid to the deceased are produced. Mere issuance of salary certificate signed by him and stepping into witness box to prove the contents therein would not suffice, more particularly, when his definite answer is that he did not file any returns before the Labour Department though, eight (08) workers were employed by him and he did not bring copies of income tax returns. Therefore, it has to be held that legally admissible and acceptable evidence is not placed before the Tribunal on account of which the Tribunal was driven to arrive at the conclusion that the evidence of PW.4 and Ex.A-8 leads nowhere.

17. Now, turning to the evidence of PW.3, basing on the answers given by him that he has not seen the deceased at any time and expressed ignorance as to whether the deceased had completed the course, opined that there is no exact evidence forthcoming as to the income of the deceased. That has been the reason, the Tribunal was compelled to fix the income hypothetically. When the entries in II Schedule would provide Rs.15,000/-

per annum as the income for an unlearning person, in view of the evidence that the deceased was prosecuting hardware course in M/s. C-Sheel Software Training and Solutions, fixing the annual earnings at Rs.21,000/- by the Tribunal cannot be faulted. However, keeping in view, that the deceased was 23 years old and the evidence of PW.3 and Exs.X-1 to X-5, certainly, there would have some prospects if not bright prospects, as the course which he was doing and the training he was undergoing, the annual income can be fixed at Rs.24,000/- instead of Rs.21,000/-, which appears to be reasonable.

18. Now, whether 1/3rd deducted by the Tribunal is permissible or if not, what would be the permissible deduction in case a person dies in an unmarried status, requires consideration. The law is now well settled that deduction of 50% is permissible towards personal expenses where the deceased dies in an unmarried status and, accordingly, it works out to Rs.12,000/- [Rs.24,000/- minus 50%].

19. Now, turning to the multiplier, the Tribunal has taken the age of the mother, who was 40 years and fixed the relevant multiplier at '13'. The law is also well settled and the decisions of the Hon'ble Supreme Court in **Amrit Bhanu Shali v. National Insurance Company Limited**[3] and **Munna Lal Jain v.Vipin Kumar**

Sharma[4], held that the age of the deceased is the criteria for resorting to appropriate multiplier provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma's Case** (Surpa 1) even in case of death of a person in unmarried status. Since the deceased was 23 years old on the date of accident, the relevant multiplier factor is '18'. Thus, the loss of dependency would work out to Rs.2,16,000/- [Rs.12,000/- x 18].

20. Now, turning to whether the petitioners are entitled to any future prospects, again, keeping in view, the decision of the Hon'ble Supreme Court in **Amrit Bhanu Shali's Case** (Supra 3), the petitioners are entitled to 50% of the loss of dependency which works out to Rs.1,08,000/- [50% of Rs.2,16,000/-]. Thus, the petitioners are totally entitled to Rs.3,24,000/- [Rs.2,16,000/- + Rs.1,08,000/-].

21. Towards conventional sums, the Tribunal awarded Rs.15,000/- under the head 'loss of estate', the same is maintained. The Tribunal has also granted Rs.2,000/- under the head 'funeral and other expenses' and the same is enhanced to Rs.10,000/-. Thus, in all, the petitioners are entitled to Rs.3,49,000/- as compensation as against the amount of Rs.1,99,000/- granted by the Tribunal.

22. The Tribunal has granted interest at the rate of 7.5% per annum. The same is maintained on the amount granted by the Tribunal and for the enhanced amount also, in view of the decision of the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2).

23. In the result, the appeal is allowed in part, and the order and decree, dated 07-07-2006, in M.O.P. No.649 of 2003, passed by the Tribunal, are modified, enhancing the compensation to Rs.3,49,000/- (Rupees three lakhs and forty nine thousand) from Rs.1,99,000/- with interest at the rate of 7.5% per annum from the date of petition till realization. The compensation amount shall be apportioned between the petitioners in the same proportion in which the original compensation amounts were directed to be apportioned and disbursed by the Tribunal. 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

July 26, 2016.
Mgr

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[1]. (2009) 6 Supreme Court Cases 121

[2]. 2013 ACJ 1403

[3]. 2012 AIR SCW 3901

[4]. (2015) 6 SCC 347