HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2597 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.3,80,000/- as compensation by the order dated 05.09.2006 in O.P. No.593 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal') as against the claim of Rs.5,00,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Malavath Devji, husband of appellant No.1, father of appellant Nos.2 and 3 and son of appellant No.4, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. Appellant Nos.1 to 4 herein, who are the wife, children and mother of the said Malavath Devji, are petitioner Nos.1 to 4, while respondent Nos.1 and 2, who are the owner and insurer of the Mahindra Max bearing registration No.AP 25U 5738, are respondent Nos.1 and 2, respectively, 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. Heard Sri Y.S.Yella Nand Gupta, learned counsel for the appellants. Respondent Nos.1 and 2, who are owner and insurer,

though served with notices, have not entered appearance. Thus, none appears for respondent Nos.1 and 2.

5. It appears, the submission made by respondent No.2-Insurance Company was to the effect that the driver of respondent No.1 allowed the passengers travelling more than the capacity permitted by the concerned authority and that the same amounts to violation and in that direction, Exs.B.1 to B.5 have been marked. However, since no appeal is preferred, that stand taken by respondent No.2 does not have any bearing in adjudicating upon the request of respondent No.2.

6. The Tribunal has fixed the monthly income of the deceased at Rs.3,000/- or the annual income at Rs.36,000/-, deducted 1/3rd therefrom towards personal living expenses of the deceased, applied multiplier factor '15' as the deceased was 45 years old and arrived at Rs.3,60,000/- towards loss of dependency and awarded Rs.15,000/- towards loss of consortium and Rs.5,000/- towards transportation charges and funeral expenses. A total sum of Rs.3,80,000/- was granted by the Tribunal with interest at 9% per annum.

7. The submission of the learned counsel for the appellants, in view of the change in law, the petitioners would become entitled to more than what has been claimed as the dependents are four in

number and the petitioners are also entitled to future prospects on account of the death of the bread earner of the family.

8. The law is now well settled by 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] and the permissible deduction is 1/4th in view of the fact that the petitioners are numbering four, who are all dependents on the deceased on the date of accident. Therefore, when 1/4th is deducted, the contribution of the deceased to the family would work out to Rs.27,000/-. As per the table formulated by the Hon'ble Supreme Court in **Sarla Verma's** case (supra 1), relevant multiplier factor is '14' for the persons aged between 41 and 45 years and, therefore, when multiplier factor '14' is applied, the loss of dependency works out to Rs.3,78,000/-. The petitioners are also entitled to 30% of the said amount towards future prospects, which works out to Rs.1,13,400/-. Thus, towards loss of dependency including future prospects, the petitioners become entitled to Rs.4,91,400/-. No amount is awarded by the Tribunal towards loss of estate. The petitioners are entitled to Rs.50,000/- towards conventional sums as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[3].

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[1] (2009) 6 SCC 121
[2] 2013 ACJ 1403
[3] LAWS (SC) -2014-4-67

9. Petitioners laid the claim for Rs.5,00,000/-, but, certainly, they cannot be deprived of Rs.5,41,400/-, though, it exceeds the claim made by them, in view of the law declared by the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's** case (supra 2), wherein, it was held that it is the duty of the Courts to award just, equitable, fair and reasonable compensation with reference to the settled principles of law irrespective of the claim made.

10. Thus, the petitioners are entitled to a total sum of Rs.5,41,400/- (Rupees five lakh forty one thousand and four hundred) as against Rs.3,80,000/- granted by the Tribunal towards compensation and the same is accordingly granted. The enhanced compensation shall be apportioned among the petitioners in the same proportion as directed by the Tribunal. However, the petitioners are directed to pay Court fee on the excess amount granted by this Court than the claim within a period of three months from today.

11. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 2).

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[4] AIR 2003 SC 674
[5] 2012 ACJ 191 (SC)

12. Accordingly, the instant appeal is allowed 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.

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

A. SHANKAR NARAYANA, J

17th November, 2016

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