

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A No. 1008 OF 2009

JUDGMENT:

Dissatisfied with the award of Rs.5,24,000/- as compensation for the death of one Bijelela Raju (hereinafter referred to as 'the deceased') as against the claim of Rs.6,00,000/- laid under Section 166 (1)(c) of the Motor Vehicles Act, 1988 (for short 'the Act'), the claimants, who are the wife, minor children and mother of the deceased, preferred this appeal against the judgment and decree dated 25.11.2008 in O.P.No.505 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad (for brevity 'the Tribunal'), seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. The fact-situation would reflect that on 05.06.2007 at about 9.00 am., while the deceased was going on his Hero Honda Motorcycle from Indalwai towards Chandrayanpalli, and when he reached near bus stand, Rooplanayak Thanda on N.H.7 road, a lorry bearing No.HR-55/D-9498 driven by its driver at high speed in a rash and negligent manner came from Indalwai side and dashed the motor cycle of the deceased from behind, due to which, the deceased fell down and the lorry

ran over his head, as a result, the head of the deceased was crushed and he died instantly.

4. Claiming that the deceased was 30 years old at the time of incident and was earning Rs.15,000/- per month on bricks business and was contributing his earnings to them, the claimants sought a sum of Rs.6,00,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the crime vehicle respectively.

5. The first respondent – owner of the crime vehicle filed written statement denying the petition averments, however, contending that since the vehicle was insured with the second respondent, the second respondent is under obligation to pay the compensation, and, therefore, he sought to dismiss the claim petition against him.

6. The second respondent – Insurance Company also filed written statement opposing the claim by raising various pleas. A specific plea was raised stating that the owner and insurer of the motorcycle were also necessary parties. However, it appears that no plea of contributory negligence was putforth by the Insurance Company.

7. The Tribunal, on the basis of the pleadings, framed three issues about responsibility for the accident.

8. During the course of evidence, the first claimant besides examining herself as P.W.1 has examined an eyewitness to the occurrence as P.W.2 and marked Exs.A.1 to A.8. On behalf of the respondents, no oral or

documentary evidence was let in.

9. The Tribunal, on perusal of evidence, recorded a finding on issue No.1 in favour of the claimants.

10. On issue No.2, the Tribunal, basing on the evidence of P.Ws.1 and 2, has taken the age of the deceased as 30 years by the date of accident, more particularly, the approximate age recorded in Ex.A.3 – post mortem examination report and applied multiplier ‘18’ basing on Schedule - II to Section 163-A of the Act. Concerning the earnings of the deceased, the Tribunal, holding that the claimants have not adduced any legally acceptable evidence to show that the deceased was earning Rs.15,000/- per month on bricks business, fixed the income at Rs.3,500/- per month and worked out the yearly earnings at Rs.42,000/-. After deducting 1/3rd from out of the said amount towards personal expenses of the deceased, the Tribunal arrived the contribution to his family at Rs.28,000/- per annum. Applying multiplier ‘18’, the Tribunal arrived at Rs.5,04,000/- towards loss of dependency. Besides the same, the Tribunal has granted Rs.15,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. Thus, in total, the Tribunal awarded Rs.5,24,000/- towards compensation and interest @ 9% per annum thereon by placing reliance on the decision of the Hon'ble the Apex Court in the case of ***Andhra Pradesh State Road Transport Corporation v.***

M. Ramadevi and others^[1].

11. Dissatisfied with the quantum of compensation awarded by the Tribunal, the instant appeal is preferred by the claimants seeking enhancement.

12. Sri Y.S. Yella Nand Gupta, learned counsel for the claimants/appellants would submit that the appellants are entitled to more than the amount claimed by them and in view of the decisions of the Hon'ble Apex Court in

Nagappa v. Gurudayal Singh & others^[2], ***Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited***^[3] and ***Rajesh and others***

v. Rajbir Singh and others^[4], the claimants cannot be deprived of just and fair compensation irrespective of the claim made and that since the dependents are four in number, 1/4th deduction is permissible towards personal expenses of the deceased and that the appellants are also entitled to future prospects and accordingly, prayed to determine the compensation and award the amount which would be fair and adequate and in tune with the relevant provisions of the Act.

13. Though, the respondents were served with notices, none appears for them.

14. Perused the order under challenge and the material available on record. So far as the finding recorded by the Tribunal fixing the income of the

deceased at Rs.3,500/- per month, since no documentary evidence was placed by the claimants to show that the deceased was doing bricks business and was earning Rs.15,000/- per month, that finding cannot be disturbed and hence, the same is maintained.

15 (a). Concerning 1/3rd deduction towards personal expenses of the deceased is concerned, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[5], 1/4th deduction is permissible. Hence, when 1/4th amount is deducted from Rs.42,000/- i.e., the annual income of the deceased, his contribution to the family would work out to Rs.31,500/-.

(b). The Tribunal, somehow, applied multiplier '18' basing on the entry in II Schedule to Section 163-A of the Act taking the age of the deceased as 30 years. But, Ex.A.3-post-mortem examination report would show that the age of the deceased was 30 years approximately. However, keeping in view the age of claimants Nos.2 and 3, who were aged about 9 years and 8 years respectively, at the time of filing the O.P, certainly, the deceased would be aged above 30 years. Thus, he falls within the age group of persons between 31 and 35 years, in which case, the appropriate multiplier, as per **Saala Varma's case (supra 5)**, is '16'. When multiplier '16' is applied, the loss of dependency works out to Rs.5,04,000/-

(Rs.31,500/- x 16).

(c). Since the age of the deceased is taken as above

30 years at the time of accident, the appellants are entitled to 50% of the loss of dependency in view of the decisions in **Sarla Verma's Case (Supra 5)** and **Rajesh's case (supra 4)** and the same works out to Rs.2,52,000/- (Rs.5,04,000/- x 50%). Hence, the appellants are entitled to Rs.2,52,000/- towards future prospects.

(d). Further, the appellants are entitled to Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[6].

16. Thus, in total, the appellants are entitled to compensation of Rs.8,06,000/- (Rupees eight lakhs six thousand only) as against Rs.5,24,000/- awarded by the Tribunal, and the same is accordingly awarded. The appellant is entitled to interest on the compensation of Rs.5,24,000/-, awarded by the Tribunal, @ 9% per annum, and on the enhanced compensation of Rs.2,82,000/- @ 7.5% per annum, from the date of petition till realisation, as per the decision of the Apex Court in **Rajesh's case (supra 4)**.

17. The appellants are directed to pay Court fee on the excess amount granted by this Court than the amount claimed by them within a period of three (3) months from

today.

18. Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 05.08.2016

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[\[1\]](#) 2008 ACJ 930

[\[2\]](#) AIR 2003 SC 674

[\[3\]](#) 2012 ACJ 191 (SC)

[\[4\]](#) 2013ACJ1403 = 2013(4)ALT35

[\[5\]](#) (2009) 6 Supreme Court Cases 121

[\[6\]](#) . 2014 ACJ 1430