HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 369 of 2005

Judgment:

Having not satisfied with the award of Rs.2,10,000/- granted by the Tribunal as compensation, by the order, dated 09.09.2004, in OP No. 1464 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–III Additional Chief Judge, City Civil Court, Hyderabad, as against the claim of Rs.5,00,000/- made by the petitioners under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred seeking enhancement.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 22.06.2001 the deceased, namely Lala Sridhar @ Raju, was proceeding on his Scooter bearing registration No.AP-23C-9887 to Rayampet to attend his personal work and, at about 9.00 AM, when he reached near National Dhaba on National Highway No.7, a TATA Sumo Car bearing registration No.AP-9AG-2788 driven by its driver at high speed in a rash and negligent manner came from behind and hit him, due to which, he died instantly. The petitioners, being wife, children and parents of the deceased respectively, preferred the claim contending that he was 27 years old on the date of accident, working as a driver on a monthly salary of Rs.3,150/- and sought a sum of Rs.5,00,000/- as compensation.

4. Before the Tribunal, the first respondent – owner of the vehicle opposed the claim. The second respondent – Insurance Company also opposed the claim, but there appears to be no specific pleas raised by the Insurance Company as to violation of terms and conditions of the policy.

5. The Tribunal, based on the said pleadings, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the first petitioner, besides examining herself as PW.1, also examined the eye witness as PW.2 and the employer of the deceased husband as PW.3 and marked Exs.A1 to A7, which include the original salary and employment certificate of the deceased that was issued by PW.3. On behalf of the respondents no witnesses were examined, but copy of insurance policy was marked as Ex.B1.

7. The Tribunal, on issue No.1, held that due to rash and negligent driving of the driver of the Car the accident had occurred and, therefore, found it in favour of the petitioners. On issue No.2, taking the age of the deceased as 29 years, basing on the post-mortem examination report entry marked as Ex.A3, and, though, PW.3 was examined to prove Ex.A7, still, the Tribunal refused to accept the same on the ground that no other reliable evidence is placed to show that the deceased was earning Rs.3,150/- per month as spoken to by PW.3 and, taking the notional income at Rs.15,000/- per annum, deducting 1/3rd there from towards personal expenses and remainder towards contribution to the family, worked out the loss of dependency by applying the multiplier '17' and arrived at Rs.1,70,000/- towards the same. Besides the same, the Tribunal has granted a sum of Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.15,000/- towards loss of estate. Besides the same, the Tribunal has also granted Rs.5,000/- towards transportation of the dead body for funeral. Thus, a total sum of Rs.2,10,000/- was granted with interest at 6% p.a.

8. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners contending in the grounds that the Tribunal, somehow, overlooked the evidence of PW.3 and Ex.A7 and

ought to have believed the same and taken Rs.3,150/- per month as the income and ought to have applied the multiplier ‘18’ instead of ‘17’ and, therefore, sought to grant the balance amount.

9. Heard Sri M. Krishna Reddy, learned counsel for the appellants, and Sri Sriman, learned counsel for the second respondent – Insurance Company. So far as first respondent is concerned, a memo in USR No.273 of 2012 was filed stating that the notice sent to him was returned unserved with an endorsement “Not Claimed”. However, since the first respondent suffered the decree, his absence would not make any difference in adjudicating upon the request seeking enhancement of the compensation.

10. Perused the order under challenge and the evidence on record both, oral and documentary, let in by the petitioners. It is no doubt true that the Tribunal has not considered the evidence of PW.3 and Ex.A7, but Ex.A2 clearly shows that the deceased was a driver and, in which event, the notional income of Rs.15,000/- ought not to have been taken. Since there is no tangible evidence to show that PW.3 was paying salary of Rs.3,150/- per month to the deceased as he has not submitted any records showing the payment of Rs.3,150/- per month to the deceased, the Tribunal was right in not placing reliance on the evidence of PW.3 and Ex.A7, still, since the deceased was working as driver, certainly, he must had been earning Rs.2,000/- per month during the year 2001 and, therefore, his annual income is fixed at Rs.24,000/- as against Rs.15,000/- taken by the Tribunal. The claimants are five in number. Hence, 1/4th deduction from the salary towards personal expenses is permissible in view of the decision of the Hon’ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]. When the same is applied, his contribution to the family works out to Rs.18,000/- per annum. The relevant multiplier is ‘17’ for the age group of persons between 26 and 30 years as per the

very same decision. Therefore, when the multiplier '17' is applied to the multiplicand Rs.18,000/-, the loss of dependency works out to Rs.3,06,000/-. Learned counsel for the appellants would also submit that in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2], the petitioners are entitled to future prospects at 50% of the income. Accepting the same, towards addition of future prospects, a sum of Rs.1,53,000/- is granted making a total of Rs.4,59,000/-. Towards conventional sums, the Tribunal awarded Rs.40,000/-, but in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Company Limited**[3], a conventional sum of Rs.50,000/- is awarded. Thus, the petitioners are totally entitled to a sum of Rs.5,09,000/- (Rs.3,06,000/- + Rs.1,53,000/- + Rs.50,000/-). The claim made by the appellants is for Rs.5,00,000/- as compensation. On determination, the amount of compensation is arrived at Rs.5,09,000/- as mentioned supra. In view of the decisions of 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 and others v. Rajbir Singh and others** (2 supra), wherein, it was held that it is 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, the enhancement of compensation from Rs.2,10,000/- to Rs.5,09,000/- is permissible. The Tribunal granted interest at 6% p.a. In fact, in view of the decision of the Hon'ble Apex Court in **Rajesh's** case (2 supra), the petitioners are entitled to interest at 7.5% p.a., and, accordingly, the same is granted on the entire amount from the date of petition till realization. Concerning the apportionment of compensation amount, the same shall be in proportion to the shares made by the Tribunal amongst the petitioners. However, the petitioners are directed to pay deficit court fee within a period of three (3) months from today.

11. Accordingly, the MACMA is allowed. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 19.01.2016
Nsr

[1] (2009) 6 SCC 121

[2] 2013 ACJ 1403 = 2013(4) ALT 35

[3] 2014 ACJ 1430

[4] **AIR 2003 SC 674**

[5] **2012 ACJ 191 (SC)**