

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2353 OF 2005

JUDGMENT:

The petitioners in M.O.P. No.1114 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Visakhapatnam (for short 'the Tribunal'), are the appellants in the present appeal.

2. Feeling dissatisfied with the award of Rs.6,93,240/- as against the claim of Rs.10,00,000/- laid by them under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, by the order and decree, dated 19-04-2005, in M.O.P. No.1114 of 2002 passed by the Tribunal, they preferred the instant appeal seeking enhancement of compensation.

3. The appellants herein are the petitioners, while respondent Nos.1 to 3, who are driver, owner and insurer of Bus bearing registration No.AP 37U 2814, respectively, are respondent Nos.1 to 3 and respondent Nos.4 to 6, who are driver, owner and insurer of Jeep bearing registration No.AP 16N 1574, respectively, are respondent Nos.4 to 6 in M.O.P. before the Tribunal.

4. For the sake of convenience, the parties are

hereinafter referred to as they were arrayed in MOP before the Tribunal.

5. The fact-situation would show that on 28-05-2002 at about 4.00 p.m., one Sri Malleswarapu Shankar Rao, who was working as a Junior Assistant in District Police Office, Visakhapatnam, along with his colleagues went to Ponnuru in a Jeep bearing registration No.AP 16N 1574 from Visakhapatnam to attend their friend's marriage. Having attended the marriage, while they were returning on 29-05-2002 at about 3.30 p.m. and reached Ashramam Hospital, Eluru, a City Bus bearing registration No.AP 37U 2814 driven by respondent No.1 in a rash and negligent manner came in opposite direction and hit their jeep, due to which, he died instantly and two others died in the hospital, whereas other injured persons were shifted to Government Hospital, Eluru, for treatment.

i) The petitioners herein, who are wife, minor children and widowed mother of the deceased, as legal representatives, laid the aforesaid claim.

6. Respondent Nos.1, 2, who are driver and owner of the bus, and respondent No.4, who is driver of the jeep, remained *ex parte* before the Tribunal.

7. Respondent No.3, insurer of the bus, filed

counter opposing the claim. It is stated that the accident had occurred due to negligence of the deceased by travelling in the jeep as an unauthorized passenger and, thus, sought to dismiss the claim against it.

8. Respondent No.5, owner of the jeep, filed counter opposing the claim and contended that her husband, who was working as Senior Assistant in the office of Commissioner of Police, Visakhapatnam, also died while travelling in the jeep, and that the police filed charge sheet against the driver of bus, respondent No.1 herein, and, therefore, sought to fasten liability on respondent Nos.1 to 3 alone.

9. Respondent No.6, insurer of the jeep, filed counter opposing the claim by raising all the pleas apart from the plea raised by respondent No.5.

10. The Tribunal basing on the aforesaid pleadings framed the following issues:

- “(1) Whether M. Shankara Rao died on account of collision of the vehicles bearing registration No.A.P.37 U 2814 and A.P. 16 N 1574 on account of the rash and negligent driving of the respondents 1 and 4?
- (2) Whether the petitioners are entitled to compensation, if so, to what amount and from which of the respondents?
- (3) To what relief?”

11. During inquiry, the petitioner No.1 examined herself as PW.1, besides examining PWs.2 and 3 and

marked Exs.A-1 to A-7 and also marked Exs.X-1 and X-2, which are attested true copies of service register and pay roll register of the deceased. On behalf of respondents, no witnesses were examined and no documents were filed.

12. The Tribunal having appreciated the evidence of PW.2, who was an eye-witness to the occurrence and also who travelled in the jeep and basing on Exs.A-1 and A-5, which are copy of first information report and attested copy of charge sheet, respectively, observing that the police filed charge sheet against respondent No.1, held issue No.1 in favour of the petitioners holding that the accident had occurred only due to rash and negligent driving of respondent No.1 but not respondent No.4.

13. On issue No.2, the Tribunal, placing reliance on the evidence of PWs.1 and 3 and also Ex.A-7 and taking the net salary of deceased as Rs.5,277/- arrived the annual income at Rs.63,324/- and after deducting 1/3rd therefrom, worked out the annual loss of dependency at Rs.42,216/-. Applying the multiplier '15' as the deceased was aged 44 years, the Tribunal arrived the total loss of dependency at Rs.6,33,240/-. Besides the same, the Tribunal also awarded Rs.15,000/- to the petitioner No.1 towards loss of consortium, Rs.15,000/- to the petitioner Nos.2 and 3 towards love and affection, Rs.10,000/-

towards funeral expenses and Rs.20,000/- towards loss of estate and, thus, making a total compensation of Rs.6,93,240/- to which the petitioners are entitled, granted the same with interest 7.5% per annum thereon.

14. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioners contending in the grounds of appeal that the Tribunal went wrong in taking the net salary of the deceased and, in fact, ought to have taken the gross salary of Rs.8,165/- and that ought not to have deducted 1/3rd there-from and, therefore, sought to grant balance amount.

15. Heard Sri O. Manohar Reddy, learned counsel for the petitioners and Ms. P. Vijaya Kumari, learned counsel for respondent No.5 and Mrs. Kalpana Ekbote, learned counsel for respondent No.6. Despite service of notice on respondent Nos.1 and 3, none appears, whereas notice sent to the address of respondent No.4, returned un-served. Respondent No.2, owner of the bus, died as per the postal endorsement and since no steps were taken, the appeal against him was dismissed for default by orders dated 05-01-2012, so also against respondent No.4.

16. Perused the order and the material on record, both, oral and documentary, let in by the parties.

17. As far as the issue No.1 is concerned, it does not require any discussion in view of the fact that the request is made for enhancement of compensation in the instant appeal.

18. The only question that arises for consideration is whether the compensation granted by the Tribunal is just and adequate, or whether it warrants interference.

19. So far as the age of the deceased is concerned, the Tribunal arrived at 44 years by the date of accident basing on Ex.X-1, which is attested true copy of service register of the deceased maintained by the concerned department showing that he was working as Junior Assistant at the relevant time. Therefore, the age of the petitioner is to be taken as '44' years as rightly fixed by the Tribunal. Ex.A-7 is the salary particulars showing that the deceased was drawing a gross salary of Rs.8,165/- and net salary of Rs.5,277/- per month which relates to the month of May, 2002. The Tribunal has taken carry home salary i.e., net salary in view of the law then prevailing. It is no more in dispute that it is the gross salary that has to be taken into consideration while determining the compensation, but minus statutory deductions. Ex.A-7 contents were proved through the evidence of PW.3. So far as authenticity of Ex.A-7 is concerned, there is no

challenge to it and even the Tribunal has relied on salary particulars mentioned therein. Ex.A-7 reflects the pay particulars of the deceased including government deductions for the month of May, 2002, which are thus:

“ Pay Particulars

Pay	5810
D.A.	1093
HRA	1162
CCA	100
Gross	8165
Govt.Deductions	
G.P.F. (S)	600
G.P.F Loan	2138
A.P.G.L.I (S)	100
GIS	30
P.Tax	20
Total	2888
Net	5277 ”

In the said pay particulars, Rs.20/- is shown under the deduction column towards professional tax, the same has to be deducted from the gross salary. The other amounts are towards government loans or repayment of the loan amount obtained from G.P.F. account, which is a major contribution of Rs.2,138/-. When the benefits are given to the legal representatives, the due amount towards loan contracted by the deceased would be adjusted and balance would be given. Therefore, the other amounts cannot be taken for the purpose of deduction from the salary to determine the compensation. Thus, the amount which, for the purpose of determination of compensation, has to be taken from Ex.A-7 is Rs.8,165/- minus Rs.20/-, which works out to Rs.8,145/- per month or Rs.97,740/- per annum.

20. The petitioners are four in number, and the compensation was also apportioned by the Tribunal. Therefore, the law laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1] would apply as regards deduction towards personal expenses. Thus, $\frac{1}{4}$ th there-of, which works out to Rs.24,435/-

$\frac{1}{4}$ th of Rs.97,740/-] is deducted, an amount of Rs.73,305/- would be the contribution to the family. For the persons in the age group of 41 to 45 years, the relevant multiplier is '14' as mentioned in the table formulated in the aforesaid decision. When multiplier '14' is applied, it works out to Rs.10,26,270/- [Rs.73,305/- x 14]. Thus, the amount of Rs.10,26,270/- accounts for loss of dependency to which the petitioners are entitled.

21. Further, the petitioners are also entitled additionally 30% towards future prospects as the deceased was in government service and would be entitled to incremental benefits including promotional chances. Even, the law laid down in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**^[2] would favour the petitioners to add 30% of the amount worked out towards loss of dependency, towards future prospects. Thus, 30% of Rs.10,26,270/- works out

to Rs.3,07,881/-. Thus, the petitioners are entitled to Rs.13,34,151/- [Rs.10,26,270/- + Rs.3,07,881/-]. This apart, the petitioners are also entitled to conventional sum of Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others** ^[3].

Thus, in all, the petitioners are entitled to Rs.13,84,151/- [Rs.13,34,151/- + Rs.50,000/-] as compensation as against Rs.6,93,240/- granted by the Tribunal. Since the claim itself is for Rs.10,00,000/- and entitlement of petitioners is for Rs.13,84,151/- which, far exceeds the claim made by them, but, since the appeal being preferred by the petitioners seeking enhancement, there cannot be any hurdle to grant the amount exceeding the claim made by the petitioners in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others** ^[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited** ^[5] and **Rajesh's Case** (Supra 2). The petitioners are directed to pay court fee on excess compensation within three (03) months from today.

22. So far as the rate of interest is concerned, the Tribunal has granted at 7.5% per annum and the same is maintained as per the decision of the Hon'ble Supreme

Court in **Rajesh's Case** (Supra 2).

23. In the result, the appeal is allowed and the order and decree, dated 19-04-2005, in M.O.P. No.1114 of 2002, passed by the Tribunal are modified enhancing the compensation to Rs.13,84,151/- (Rupees thirteen lakhs eighty four thousand one hundred and fifty one) from Rs.6,93,240/- with interest at 7.5% per annum thereon from the date of petition till realization. The apportionment would be in accordance with the apportionment made by the Tribunal so far as the enhanced amount of Rs.6,90,911/- is concerned. 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 15, 2016.

Mgr

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

[\[2\]](#) . 2013 ACJ 1403

[\[3\]](#) . 2014 ACJ 1430

[\[4\]](#) . AIR 2003 SC 674

[\[5\]](#) . 2012 ACJ 191 (SC)