

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1703 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.2,41,000/- towards compensation as against the claim of Rs.4,00,000/- laid under

Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), petitioners preferred this Civil Miscellaneous Appeal, under Section 173 of the Act, against the order and decree, dated 16.05.2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Khammam, in M.V. O.P. No.311 of 2001, seeking enhancement of compensation.

2. The appellants herein, who are wife and children of one Murali, who died in the accident, are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are driver-cum-owner (insured) and insurer, respectively, of a private Mini Bus bearing No.AP-9-T-364 that involved in the accident, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal and Murali, who died in the accident, as 'deceased.'

4(a) The facts, in brief, are that on 09.12.2000, while one Murali was proceeding on foot towards Jeellacheruvu in order to bring labourers to work in his fields for harvesting purpose, near the outskirts of his village, at about 7.00 p.m., a Mini Bus bearing No.AP-9-T-364 driven by respondent No.1 in a rash and negligent manner at high speed, came in the opposite direction and initially hit a Hero Honda motorcycle and then hit the said Murali, due to which, he sustained serious injuries. Immediately, he was shifted to Government Hospital, Khammam, in an auto-rickshaw, but he succumbed to injuries.

(b) The petitioners, stating that the deceased was earning Rs.1,80,000/- per annum on agriculture by raising paddy, cotton, mirchi, vegetables and owning Acs.5.00 of land, sought Rs.4,00,000/- towards compensation against respondent Nos.1 and 2 jointly and severally.

5. Respondent No.1, owner of the private bus remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the private bus, opposed the claim raising various grounds.

7. Based on the pleadings of the parties, the Tribunal framed three (3) issues in order to determine

compensation as well as negligence in taking place of accident.

8. During enquiry, petitioner No.1, wife of the deceased, examined herself as PW.1 besides examining one Katta Subba Rao as PW.2 and marked Exs.A-1 to A-3. On behalf of the insurer, no oral or documentary evidence was adduced.

9. The Tribunal, on appraisal of evidence, held issue No.1 in favour of the petitioners. On Issue No.2, taking income of the deceased at Rs.21,000/- per annum, by deducting $1/3^{\text{rd}}$ i.e., Rs.7,000/- (Rs.21,000/- x $1/3$) therefrom towards his personal expenses, taking the remainder Rs.14,000/- towards his contribution to the family, considering his age as 36 years as per Ex.A-3 post-mortem report, applying multiplier '16', arrived at Rs.2,24,000/- towards loss of dependency and besides the same, granted Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of consortium, and, thus, granted a total sum of Rs.2,41,000/- towards compensation with interest at 9% per annum by ordering apportionment.

10. It is the aforesaid order under challenge in the instant appeal on the ground that meagre amount was granted by the Tribunal by overlooking the evidence on

record through PW.1 and no amount was granted towards non-pecuniary damages and that the amounts granted under various heads towards conventional sum are very meagre, and, therefore, sought to grant the balance amount.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the petitioners (appellants).

12. Despite service of notice, there is no representation for respondent No.2, insurer.

13. Though notice was not served on respondent No.1, insured, it was treated as served in view of the order of this Court, dated 04.01.2012.

14. Even the income of the deceased at Rs.21,000/- per annum taken by the Tribunal is confirmed, the petitioners are entitled to enhancement of compensation for the reason that deduction at 1/3rd is impermissible in view of the recent decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1] and, therefore, if 1/4th (Rs.21,000/- x 1/4) is deducted towards personal expenses, it works out to Rs.15,750/- towards his contribution to the family. For the age group of the deceased, who was 36 years old at the relevant time as per Ex.A-3 post-mortem report, the

multiplier factor is '15' as per the table formulated in **Sarla Verma's Case** (Supra 1) and, therefore, multiplier '15' has to be applied instead of '16'. Thus, it works out to Rs.2,36,250/- (Rs.15,750/- x 15).

The petitioners are also entitled to additional amount towards future prospects at 50%, in view of the decisions in **Sarla Verma's Case** (Surpa 1) and **Rajesh and others v. Rajbir Singh and others**^[2], and the same works out to Rs.1,18,125/- (Rs.2,36,250/-x50%). Thus, the total loss of dependency works out to Rs.3,54,375/- (Rs.2,36,250/- + Rs.1,18,125/-).

15. Towards conventional sum, an amount of Rs.50,000/- is granted in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**^[3] as against Rs.17,000/- granted by the Tribunal.

16(a) Thus, the petitioners are entitled to a total compensation of Rs.4,04,375/- (Rupees four lakhs four thousand three hundred and seventy five only) as against Rs.2,41,000 awarded by the Tribunal, and the same is accordingly awarded, in view of the decisions of the Hon'ble Apex 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), wherein it is held that there is no prohibition to grant excess compensation when determined in the direction of fair and adequate compensation. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount granted by the Tribunal, but, on the enhanced amount, interest at 7.5% per annum is granted in view of the decision in **Rajesh's Case** (Supra 5), from the date of petition till realisation. The enhanced compensation shall be apportioned between the petitioners as directed by the Tribunal.

(b) The petitioners 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.

17. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. 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

March 23, 2016.

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[\[1\]](#) (2009) 6 SCC 121

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35

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

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

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