HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1950 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the petitioners - claimants, under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 27.06.2002 in M.O.P. No.252 of 1999 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Vizianagaram, seeking enhancement of compensation awarded on the ground that a meagre compensation of Rs.1,90,000/- was awarded, as against the claim of Rs.2,70,000/-, laid under Section 166 of the Motor Vehicles Act, 1988.

2. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellants - claimants, and Smt. M. Bhaskara Lakshmi, learned counsel for respondent Nos.3 and 4, insurance company, and perused the material on record.

3. Though, the present appeal was dismissed against respondent No.4, in fact, respondent No.3 would represent respondent No.4. Despite service of notice on respondent Nos.1 and 2, driver and owner of the lorry bearing No.AP-31-V-888, respectively, that involved in the accident, none appears for them. Even before the Tribunal, respondent Nos.1 to 3 remained *ex parte*.

4. So far as the fact-situation is concerned, there is no dispute between the parties.

5. The only question that arises for consideration is whether the appellants - claimants are entitled to enhancement of compensation, and, if so, to what amount?

6. As against Rs.2,000/- monthly earnings claimed by the appellants, the Tribunal fixed the same at Rs.1,500/- on the ground that the deceased, Busurothu Prasad, was working as a driver of the lorry. The accident took place in the year 1998. The age of the deceased was taken as 35 years and by applying multiplier '15', having deducted $1/3^{rd}$ i.e., Rs.500/- from Rs.1,500/- towards his personal living expenses and taking his contribution to his family at Rs.12,000/- (Rs.1,000/- x 12) per annum, worked out the loss of dependency as Rs.1,80,000/- (Rs.12,000/- x 15), and also awarded Rs.10,000/- towards consortium, and, thus, awarded a total sum of Rs.1,90,000/- towards compensation.

7. Even if Rs.1,500/- is taken as monthly earnings of the deceased, the deduction towards his personal and living expenses is one-fourth ($1/4^{th}$), but not one-third (1/3) as the dependants are five (5) in number, and since the deceased was 35 years old at the relevant time, multiplier is '16', but not '15', as per the law declared by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport**

Corporation[1]. Thus, when 1/4th i.e., Rs.375/- (Rs.1,500/- x ¼) is deducted towards personal living expenses of the deceased, his contribution to his family would work out to Rs.1,125/- (Rs.1,500/- - Rs.375/-) per month or Rs.13,500/- (Rs.1,125/- x 12) per annum, and when multiplier factor ‘16’, is applied instead of ‘15’, as per the table formulated by the Hon’ble Supreme Court in **Sarla Verma[1]**, the loss of dependency works out to Rs.2,16,000/- (Rs.13,500/- x 16). It is now well settled that towards future prospects as per the law declared by the Hon’ble Supreme Court in **Rajesh v. Rajbir Singh[2]** and **Sarla Verma[1]** 50% of loss of dependency is to be awarded, where the deceased is below 40 years old, in which case, it works out to Rs.1,08,000/-(Rs.2,16,000/- x 50%). Further, the appellants are entitled to a sum of Rs.50,000/- towards conventional sum in view of the decision of the Hon’ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company[3]**. Out of the conventional sum of Rs.50,000/-, appellant No.1, who is wife of the deceased, is entitled to Rs.30,000/- towards consortium.

8. Thus, the appellants are entitled to a total compensation of Rs.3,74,000/- (Rupees three lakhs seventy four thousand only) as against Rs.1,90,000/- awarded by the Tribunal, and the same is accordingly granted. Though, the compensation awarded is more than the amount claimed by the appellants, there is no embargo to grant the

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[1] **(2009) 6 SCC 121 SC - DB**
[2] **2013 ACJ 1403 (SC) (F)B**
[3] **2014 ACJ 1430 (SC) (FB)**

same, on determination of just compensation by applying structural formula, in view of the law declared by 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**[2]**.** However, the appellants are directed to pay Court fee on the amount of Rs.74,000/-, which is more than the amount claimed by the appellants towards compensation, within a period of two months from the date of receipt of a copy of the order. The enhanced compensation shall be apportioned between the appellants in the same ratio as ordered by the Tribunal.

9. However, the rate of interest at 9% per annum is maintained on the amount of Rs.1,90,000/- granted by the Tribunal, but, on the enhanced amount of Rs.1,84,000/-, interest is granted at 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh**[2], from the date of petition till realisation.

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

September 7, 2017.
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[4] **AIR 2003 SC 674**
[5] **2012 ACJ 191 (SC)**