HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2702 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, is preferred by the petitioners - claimants, who are parents of the deceased viz., Battula Vijay Kumar, who died in a motor accident on 26.05.1998 at about 2.30 p.m. at T.B. Hospital Junction, Visakhapatnam, on the ground that award of Rs.1,00,000/- towards compensation as against the claim of Rs.20,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, was very meager and sought to grant the balance amount.

2. The fact-situation leading to the manner in which the accident had occurred leading to the death of the deceased is not in dispute.

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

4. Heard Sri T.M.K. Chaitanya, learned counsel for the petitioners, and Sri Naresh Byrapaneni, learned counsel for respondent No.3 - United India Insurance Company Limited.

5. The appeal against respondent No.1, driver of the bus bearing No.AP-03-T-1197 that involved in the accident, was dismissed for default by the order of this Court dated 13.04.2016.

6. The Tribunal, having found favour with the petitioner on issue No.1, on issue No.2, holding that PW.1 admitted in his cross-examination that he did not file any document that the deceased had completed his 'House-Surgeon' and was getting Rs.1,800/- per month as stipend, recorded finding that the deceased was not a full-fledged doctor and disbelieved the certificate issued by P.G. Scans and P.J. Medicals, and, thereby taken Rs.1,800/- stipend as monthly income of the deceased and deducted 1/3rd thereof towards personal expenses of the deceased, and arriving at Rs.1,200/- per month or Rs.14,400/- per annum as his contribution to the petitioners, applied multiplier factor '18' and arrived at Rs.2,59,200/- towards loss of dependency. However, on the assertion made by petitioner No.1 in his chief-examination as PW.1 that he received Rs.9,00,000/- from the Insurance Company under personal accident policy and also in view of the circumstance that the father of the deceased is well placed and cannot be construed as dependant on the deceased, restricted the compensation to Rs.1,00,000/-, and, accordingly, granted the same with interest at 9% per annum.

7. The learned counsel for the appellants - petitioners would submit that *ex facie* the order under challenge is against the very basic philosophy of the legislation, the Motor Vehicles Act, 1988, for the reason, just and adequate compensation is the norm in determining compensation and the Tribunal completely failed in that direction. He places reliance in **Ashvinbhai Jayantilal Modi v. Ramkaran**

Ramchandra Sharma[1]**,** wherein, the facts would reveal that the deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights, who was in fact, a medical student of second year, aged nineteen (19) years, and the Hon'ble Supreme Court enhanced the future income to Rs.25,000/- per month or Rs.3,00,000/- per annum, and deducting 1/3rd of the annual income towards his personal living expenses and applying appropriate multiplier '13', keeping in view, the age of the parents of the deceased, arrived at Rs.26,00,000/- towards loss of dependency, and towards loss of love and affection awarded Rs.1,00,000/-, towards funeral expenses awarded Rs.25,000/-, totaling to Rs.27,25,000/- with interest at 9% per annum from the date of petition till realization.

8. The learned counsel for the petitioners relying on the ruling in **Ashvinbhai Jayantilal Modi**[1] seeks to grant balance amount or to determine compensation since in the present case, the deceased was pursuing House-Surgeon.

9. The learned standing counsel for the insurer on the other hand would point out the observations made by the Tribunal in discarding the income tax returns and the certificates issued by P.G. Scans and P.J. Medicals under Exs.A-5 to A-10 and also the admission made by petitioner No.1, father of the deceased as PW.1, that he did not file any document to show that the deceased had

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[1] (2015) 2 SCC 180

completed his 'House-Surgeon' and was getting Rs.1,800/- per month towards stipend.

10. It is not in dispute that the father of the deceased was an Orthopedic Specialist and appears to have been running an organization set up and pleaded that the deceased was successor to his profession. In paragraph No.12, the Tribunal makes a mention that PW.1 has filed income-tax returns of the deceased and the certificates issued by P.G. Scans and P.J. Medicals under Exs.A-5 to A-10, which would show that his son was an income tax assessee. But, the Tribunal has not adverted to the income tax returns or the assertion made by PW.1 It is no doubt true, the learned standing counsel did contend that in **Ashvinbhai Jayantilal Modi**[1], the Supreme Court found that at the age of 19 years, the deceased was diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights and that was the reason, future income was fixed at Rs.25,000/- per month, but the case at hand, the very facts would show that the deceased was 28 years old and did not even complete his House-Surgeon, and, therefore, the said principle cannot be applied to the present fact-situation, but that submission appears to be a farfetched one, as whether the deceased completed his House-Surgeon or not, the fact is, that the petitioner did medical graduation and there is nothing on record to view otherwise and even the learned counsel for the petitioner would submit that in the postmortem examination report, the age of the deceased is

mentioned as 28 years, but the deceased was 25 yeas and somehow, before the Tribunal, relevant certificates were not filed. Keeping in view, the fact that the deceased was pursuing medical graduation, even accepting the contention of the learned standing counsel for the insurer, the monthly income of Rs.1,800/- fixed by the Tribunal is far below by any means. Therefore, viewing that had the deceased survived, his future income would have been at least Rs.10,000/- per month. Since, he died in unmarried status, 50% thereof ought to be deducted towards his personal living expenses as per the principle laid down by the Hon'ble Apex Cour in **Sarla Verma v. Delhi Transport Corporation**[2], in which event, it works out to Rs.5,000/- per month (Rs.10,000/- x 50%) or Rs.60,000/- (Rs.10,000/- x 50% x 12) per annum. Applying multiplier '17', which is appropriate for the age group of 25 to 30 years as the deceased was 28 years as per the postmortem examination, in view of the decision of the Hon'ble Apex Court in **Sarla Verma**[2], contribution of the deceased to the petitioners would work out to Rs.10,20,000/- (Rs.60,000/- x 17).

11. It is no doubt true, under personal policy, a sum of Rs.9,00,00/- was got by PW.1, father of the deceased, and, in fact, in his chief-examination itself, he has fairly disclosed the said fact and not concealed it. Even otherwise, under personal policy, when amount was paid, it was associated with premium either quarterly, half-yearly or yearly depending on the policy, and, therefore,

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[2] **(2009) 6 SCC 121 SC - DB**

certainly, that amount cannot be taken into consideration while determining compensation under Motor Vehicles Act, 1988.

12. The Tribunal just based on Rs.1,800/- as monthly income, went totally wrong giving a go-bye to the factum of the deceased pursuing medical graduation and even he had not completed 'House-Surgeon', but, as already observed in the above, the Tribunal did not advert to the income-tax returns filed by PW.1, where the deceased was shown as an income-tax assessee. At this distance of time, remitting the matter may not sub-serve the demand of justice, and, therefore, the loss of dependency is worked out at Rs.10,20,000/-. Towards love and affection also, the petitioners are entitled to a sum of Rs.1,00,000/- as awarded by the Hon'ble Supreme Court in **Ashvinibhai Jayantilal Modi**[1] and a sum of Rs.25,000/- is awarded towards funeral expenses.

13. Thus, the petitioners are entitled to a total compensation of Rs.11,45,000/- (Rupees eleven lakh forty five thousand only) and the same is accordingly granted as against Rs.1,00,000/- awarded by the Tribunal. However, the rate of interest granted by the Tribunal at 9% per annum is maintained on the amount of Rs.1,00,000/- awarded by the Tribunal, but, on the enhanced amount, interest is granted at 7.5% per annum keeping in view the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[3]**.** The enhanced compensation shall

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3 2013ACJ1403 = 2013(4)ALT35

be apportioned between the petitioners equally as directed by the Tribunal.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order and the decree under challenge by 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

October 24, 2017.
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते