HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.286 OF 2014

JUDGMENT:

The present Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988, is preferred by the appellants - petitioners having got dissatisfied with the award of Rs.3,37,500/- towards compensation by the order and the decree dated 24.09.2010 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District (Fast Track) Court, Kurnool at Nandyal, in M.V.O.P. No.230 of 2009 as against the claim of Rs.4,00,000/- laid under Section 166 (c) of the Motor Vehicles Act, 1988, requesting to grant the balance amount.

2. The fact-situation occurring in the instant case leading to the death of the deceased is not in dispute.

3. Heard Sri G. Sravan Kumar, learned counsel for the appellants - petitioners, and Sri N. Mohan Krishna, learned counsel for respondent No.2 - ICICI Lombard General Insurance Company Limited.

4. None appears for respondent No.1, owner of the lorry bearing No.TN-10-R-3701 that involved in the accident, despite completion of service.

5. The Tribunal taking into consideration profession of the deceased as a 'welder', construing him as a skilled labour, fixed his

monthly income at Rs.2,500/- and deducted $1/3^{rd}$ towards his personal living expenses and considering the remainder of Rs.20,000/- per annum towards contribution of the deceased to his family, applied multiplier factor '16' taking his age as 35 years and arrived at Rs.3,20,000/- towards loss of dependency. Besides the same, the Tribunal has granted Rs.2,500/- towards funeral expenses, Rs.7,000/- towards loss of estate and Rs.8,000/- towards loss of consortium, totaling to Rs.3,37,500/-.

6. The Tribunal, of course, discussed the rulings referred to by the learned counsel for the petitioners before it, however, confined itself to the amounts already awarded so far as conventional sums are concerned.

7. The present appeal is preferred seeking enhancement of compensation.

8. The learned counsel for the appellants - petitioners would submit that in view of the ruling in **Sarla Verma v. Delhi Transport Corporation**[1], since dependants are four in number, $1/4^{th}$ deduction towards personal living expenses of the deceased is permissible and it is also his submission that future prospects were not granted, though, the rulings in **Sarla Verma**[1] and **Rajesh v. Rajbir Singh**[2] lay down granting future prospects even. The learned standing counsel for respondent No.2 - insurer would support the order under challenge

[1] **(2009) 6 SCC 121 SC - DB**

submitting that income of the deceased at Rs.2,500/- taken by the Tribunal by all reasons is reasonable, and, therefore, requests to dismiss the present appeal.

9. So far as multiplier factor is concerned, the Tribunal has correctly taken '16'. The Tribunal fixed the income of the deceased as Rs.2,500/- per month construing that he was a skilled labourer, however, the deduction of 1/3rd towards personal living expenses of the deceased requires modification in view of the decision in **Sarla Verma**[1] as contended by the learned counsel for the petitioners, and, therefore, 1/4th i.e., Rs.625/- (Rs.2,500/- x ¼) is deducted from the monthly income of Rs.2,500/-, it works out to Rs.1,875/- (Rs.2,500/- - Rs.625/-) per month or Rs.22,500/- (Rs.1,875/- x 12) towards annual contribution of the deceased to the petitioners. When multiplier factor '16' is applied, the loss of dependency works out to Rs.3,60,000/- (Rs.22,500/- x 16) instead of Rs.3,20,000/- arrived at by the Tribunal. The petitioners are also entitled to future prospects as the deceased was self-employed, in view of the decision of the Hon'ble Supreme Court in **Rajesh**[2] and 50% towards additional income i.e., future prospects is the norm laid down by the Hon'ble Supreme Court. Therefore, 50% of Rs.3,60,000/- works out to Rs.1,80,000/- (Rs,3,60,000/- x 50%), to which the petitioners are entitled towards future prospects. The petitioners are entitled to a sum of Rs.50,000/- towards conventional sum as against the amount of Rs.17,500/-

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[2] **2013 ACJ 1403 (SC) (F)B**

(Rs.2,500/- towards funeral expenses, Rs.7,000/- towards loss of estate and Rs.8,000/- towards loss of consortium) granted by the Tribunal.

10. Thus, the petitioners are entitled to a total compensation of Rs.5,90,000/- (Rupees five lakhs ninety thousand only) as against Rs.3,37,500/- awarded by the Tribunal, and the same is accordingly granted. Though, the compensation awarded exceeds the amount claimed by the appellants - petitioners, there is no embargo to grant the same, on determination of just compensation by applying structural formula, in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[3] **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[4] and **Rajesh's Case**[2]**.** However, the petitioners are directed to pay Court fee on the amount of Rs.1,90,000/-, which is in excess of the amount claimed by them towards compensation, within a period of three (3) months from the date of receipt of a copy of the order. The enhanced compensation shall be apportioned between the petitioners in the same ratio as ordered by the Tribunal. Concerning the rate of interest at 7.5% per annum, from the date of petition till realization, granted by the Tribunal, the same is maintained even on the enhanced compensation also since the same is in terms of the decision of the Hon'ble Supreme Court in **Rajesh**[2].

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[3] **AIR 2003 SC 674**
[4] **2012 ACJ 191 (SC)**

11. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the order under challenge 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 26, 2017.
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