HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.148 OF 2014

JUDGMENT:

The present appeal is preferred by the petitioners being legal representatives of one V. Subash, aggrieved over the order and decree, dated 22.09.2009, in O.P. No.918 of 2007 passed by the Chairman, Motor Accidents Claims Tribunal - cum - II Additional Chief Judge, City Civil Court, Hyderabad (for short 'Tribunal'), whereby and where-under, the Tribunal awarded a sum of Rs.6,90,000/- as compensation as against the claim of Rs.10,00,000/-.

2. The appellants herein are the petitioners in the aforesaid O.P., while respondent Nos.1 and 2, who are owner and insurer of Lorry bearing registration No.AP 16TT 6999, respectively, are arrayed as such.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid O.P.

4. The facts, in brief, are that on 12.01.2007, while V. Subash, who is husband of petitioner No.1, father of petitioner Nos.2 to 4 and son of petitioner No.5, was proceeding on his Scooter bearing registration No.AP 24G 8175 from bus stand towards his residence in Choutuppal, and when he reached Chinnakondur Cross-roads at about 6.00 p.m., a lorry bearing registration No.AP 16TT 6999, driven by its driver in a rash and negligent manner at high speed, hit the scooter

from its behind, as a result of which, he fell down and sustained serious head injury and died instantly.

i) The petitioners laid the claim for award of Rs.10,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') claiming that the deceased was 40 years old on the date of accident, running a Kirana and General Stores in the name and style 'Subash Kirana and General Stores' since about 25 years, earning Rs.10,000/- per month, and the petitioner Nos.2 to 4 are prosecuting their studies on the date of filing the claim petition.

5. Respondent No.1, owner of the lorry, filed his counter attributing rash and negligent driving to the deceased himself. However, pleaded that since his lorry was insured with respondent No.2 and the policy was in force, sought to dismiss the claim petition against him.

6. Respondent No.2, insurer of the lorry, filed written statement denying the material allegations and requiring the petitioners to prove the insurance coverage, driving license of the driver of the lorry, sought to dismiss the claim petition against it.

7. The Tribunal framed the following issues basing on the pleadings

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1) Whether the accident took place on 12.1.2007 at about 6.00 p.m., due to the rash and negligent driving of the lorry bearing No.AP 16TT 6999, by its driver?

2) Whether the petitioners are entitled to claim compensation from the respondents? If so, to what amount and from whom?

3) To what relief? "

8. During inquiry, PWs.1 to 3 were examined and Exs.A-1 to A-13 were marked, besides Exs.X-1 to X-3 on behalf of the petitioners. On behalf of the respondents, no witnesses were examined, but copy of policy was marked as Ex.B-1.

9. The Tribunal recorded finding on issue No.1 in favour of the petitioners. On issue No.1, as regards determination of compensation, on appreciation of Exs.A-6 - Sales tax registration certificate as well as Ex.A-7 - labour license and Exs.A-8 to A-10 - account books relating to the business of the deceased, profit and loss account and day book and sales tax returns and Exs.A-13 - purchase bill No.94 and Ex.A-12 - Food Inspector license for the year 2005-06 and 2006-07, fixed the income of the deceased as Rs.5,000/- per month by assigning reasons or annual income at Rs.60,000/-. The Tribunal deducted 1/4th thereof towards personal living expenses of the deceased as the petitioners are five in number, referring to the decision in **Sarla Verma v. Delhi Transport Corporation**[1] and arrived his contribution to the family at Rs.45,000/- per annum. Taking the multiplier factor '15' basing on the entries in second schedule appended to Section 163-A of the Act, arrived at Rs.6,75,000/- towards loss of dependency. Besides the same, the Tribunal awarded

[1]. 2009 ACJ 1298

Rs.10,000/- to the petitioner No.1 towards loss of consortium; Rs.2,500/- towards funeral expenses and Rs.2,500/- towards loss of estate and, thus, arrived at Rs.6,90,000/- towards compensation and awarded the same.

10. Basing on the entries in Ex.B-1 - policy, holding that the policy was in force on the date of accident, the Tribunal held that both the respondents are jointly and severally liable to pay the compensation. The Tribunal awarded interest at 7.5% per annum from the date of petition till realization on the aforesaid compensation amount.

11. Dissatisfied with the aforesaid amount awarded by the Tribunal, the petitioners preferred the present appeal for grant of balance amount on the ground that the Tribunal has not properly appreciated the evidence and ought to have taken the income at Rs.10,000/- per month in view of the documentary evidence filed by them.

12. Heard Sri C. Yadagiri, learned counsel for the petitioners, and Sri Vara Prasad Rao, learned Standing Counsel for respondent No.2 - Insurer. The appeal against respondent No.1 was dismissed for default, by order, dated 18.02.2013, and the same would not make any difference in deciding the present controversy.

13. The learned counsel for the petitioners while submitting that the Tribunal ought to have granted just, equitable and fair compensation, placed reliance on the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[2] to award Rs.1,00,000/- towards loss of consortium; Rs.25,000/- towards funeral expenses and future prospects. The learned counsel also relied on the provisions of Section 44AD of the Income tax Act, 1961 which is a special provision for computing profits and gains of business.

14. Now, turning to the amount of Rs.5,000/- fixed by the Tribunal as the monthly earnings of the deceased, admittedly, the petitioners have not chosen to file income tax returns and the assessment orders if the deceased was an income tax assesse. PW.3, in fact, admits in his cross-examination that the deceased was not an income tax assessee and even he did not depose the income of the deceased except stating that the deceased must be earning more than Rs.10,000/- per month. The said finding recorded by the Tribunal cannot be disturbed.

15. Concerning the future prospects, the expression of the Hon'ble Supreme Court in paragraph Nos.11 and 12 in **Rajesh**[2] is relevant for the present purpose and the same is extracted thus:

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also

[2]. (2013) 9 SCC 54

to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

16. Therefore, the petitioners are entitled to 30% in addition to the amount of loss of dependency arrived at referred to in the above, as the deceased falls in the age group of persons between 40-50 years, and when 30% is computed on the loss of dependency of Rs.6,75,000/- arrived at by the Tribunal, it works out to Rs.2,02,500/-. Thus, the petitioners are entitled to Rs.8,77,500/- towards loss of dependency and future prospects. Towards conventional sum, an amount of Rs.50,000/- is awarded as against the amounts of Rs.10,000/- towards loss of consortium, Rs.2,500/- towards funeral expenses andRs.2,500/- towards loss of estate granted by the Tribunal in view of the decision of the Hon'ble Supreme Court in **Ramilaben**

Chinubhai Parmar Vs. National Insurance Company[3]. Thus, the petitioners are totally entitled to Rs.9,27,500/- as against Rs.6,90,000/- awarded by the Tribunal.

17. Concerning the rate of interest, the Tribunal awarded the same at 7.5% per annum, which is in tune with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh**[2] and, therefore, the same is maintained on the enhanced amount even.

18. In the result, the appeal is allowed in part, and the order and decree, dated 22.09.2009, in O.P. No.918 of 2007 passed by the Tribunal are modified enhancing the compensation amount to Rs.9,27,500/- (Rupees nine lakhs twenty seven thousand and five hundred) from Rs.6,90,000/- awarded by the Tribunal with interest at 7.5% per annum thereon from the date of petition till realization. The enhanced amount shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 23, 2017.
Mgr

[3] LAWS (SC) 2014-4-67