

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA. No.414 OF 2014

JUDGMENT:

The present appeal is preferred by the petitioners – claimants in M.O.P.No.712 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Vizianagaram, (for short, 'the Tribunal') questioning the order dated 08.09.2011 passed in the said M.O.P., whereby and whereunder, compensation of Rs.6,65,000/- was awarded as against the claim of Rs.10,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988.

2. The appellants, who are the wife, children and mother of the deceased Jamma Ravi Prasad, are the petitioners - claimants, whereas respondent Nos.1 to 3 herein, who are the driver, owner and insurer of the lorry bearing No.OR 18 B 5117, respectively, are respondent Nos.1 to 3, respectively, in the aforesaid original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellants, and Sri A.Veera Swamy, learned Standing Counsel for respondent No.3 – National Insurance Company Limited. Respondent No.2, though, served with notice, has not entered appearance. It is endorsed in the appeal grounds that since respondent No.1 is the driver, he is not a necessary party.

5. The short question that requires consideration in the present appeal is whether the petitioners are entitled to enhancement of compensation as requested?

6. There is no dispute in regard to the manner in which the accident did occur, leading to the death of the said Jamma Ravi Prasad.

7. The Tribunal fixed the income of the deceased at Rs.5,000/- per month, as against Rs.7,000/- per month claimed by the petitioners on the ground that he was working as a Computer Operator in Sai Medicals, discarding the evidence of PW.3 on the ground that no cogent evidence was let in to show that the deceased was drawing salary of Rs.7,000/- per month. Thus, the Tribunal has arrived at Rs.60,000/- as annual income and, by deducting 1/3rd thereof towards personal living expenses, taken the remainder of Rs.40,000/- as annual loss of dependency. Taking the age of the deceased as 39 years, applied multiplier factor '16' to the multiplicand Rs.40,000/- and arrived at Rs.6,40,000/- towards loss of dependency and awarded the same. Besides the same, the Tribunal awarded Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, making a total of Rs.6,65,000/- with interest at Rs.7.5 % per annum.

8. Learned counsel for the appellants, would fairly concede that the multiplier factor '16' applied by the Tribunal is incorrect and it ought to have been '15' as per the multiplier table formulated by the

Honourable Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another**¹. But, however, he would plead that no future prospects were granted by the Tribunal and the conventional sums granted by the Tribunal are on lower side and, therefore, sought to grant the balance amount.

9. Learned Standing Counsel for respondent No.3, of course, supported the order passed by the Tribunal stating that so far as grant of future prospects are concerned, the issue is before a Larger Bench of the Honourable Supreme Court.

10. So far as the earnings of the deceased are concerned, the Tribunal did not go wrong. Therefore, there is no necessity to interfere with the income of the deceased fixed by the Tribunal. But, the fact is, there are four dependents and, therefore, from the annual earnings, 1/4th deduction is permissible towards living expenses of the deceased, in which case, the remainder would be Rs.45,000/-. When the same is multiplied with multiplier factor '15', as the Tribunal has taken the age of the deceased as 39 years, in view of the decision of the Honourable Supreme Court in **Sarla Verma** referred supra, the loss of dependency works out to Rs.6,75,000/-. When the ratio laid down by the Honourable Apex Court in **Rajesh and others vs. Rajbir Singh and others**² is applied, the petitioners are also entitled to future prospects at 50% of loss of dependency calculated and the same works out to Rs.3,37,500/-. Thus, the total loss of dependency

¹ (2009) 6 Supreme Court Cases 121

² 2013 ACJ 1403

works out to Rs.10,12,500/- (Rs.6,75,000 + 3,37,500). This apart, the petitioners are also entitled to conventional sum. As the conventional amounts awarded by the Tribunal are on lower side, a sum of Rs.50,000/- is awarded towards conventional sums as per the ruling of the Honourable Apex Court in **Ramilaben Chinubhai Parmar vs. National Insurance Company**³.

11. Thus, the petitioners are entitled to a total sum of Rs.10,62,500/- (Rupees Ten lakh sixty two thousand five hundred only) towards compensation, as against Rs.6,65,000/- granted by the Tribunal, and the same is, accordingly, granted.

12. Though the compensation of Rs.10,62,500/- determined exceeds the claim of Rs.10,00,000/-, there is no prohibition to award the same in arriving at just and adequate compensation in view of the decisions of the Hon'ble Apex Court in **Nagappa vs. Gurudayal Singh and others**⁴, **Sri Laxman @ Laxman Mourya vs. Divisional Manager, Oriental Insurance Company Limited**⁵ and **Rajesh's** case (2 supra). However, the petitioners are directed to pay Court fee on the excess amount of Rs.62,500/- within a period of three months from today to the credit of the original petition.

13. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on

³ LAWS (SC) -2014-4-67

⁴ AIR 2003 SC 674

⁵ 2012 ACJ 191 (SC)

Rs.10,62,500/- from the date of the petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh**'s case (2 supra).

14. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

15. Miscellaneous petitions, if any, pending in this appeal stand closed.

27.10.2017
v v

JUSTICE A.SHANKAR NARAYANA

