HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4786 OF 2004

JUDGMENT:

Heard Sri S. Surender Reddy, learned counsel for the appellants - petitioners. No representation for respondent No.2 – Insurer, though entered appearance. The appeal against respondent No.1 was dismissed for default, by order, dated 08.02.2016, but it makes no difference in deciding the request herein in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi babu Rao @ Reddemma**[1], as respondent No.1 suffered decree having remained *ex parte* before the Tribunal.

2. Aggrieved over the order, dated 26.10.2004, passed by the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad (for short 'Tribunal') in O.P. No.29 of 2002, whereby and whereby, a sum of Rs.2,66,000/- was awarded as compensation for the death of Pokkuri Gattaiah, whose legal representatives are the appellants herein, as against the claim ofRs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), the appellants preferred the present appeal under Section 173 of the Act on the ground that the compensation awarded by the Tribunal is inadequate and unjust and, therefore, sought to grant balance amount.

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[1]. 2001 (1) ALD 453 (DB)

3. The appellants herein are petitioners in the aforesaid O.P., while respondent Nos.1 and 2 herein, who are owner and insurer of lorry bearing registration No.AP 31T 3377, respectively, are respondents as such.

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

5. The Tribunal framed as many as four issues, and during trial, examined PWs.1 to 3 and marked Exs.A-1 to A-10. The proprietor of Sri Lakshmi Hotel, in which, the deceased was working as head cook according to PW.1, was examined as PW.3, and his evidence is to the effect that a monthly salary of Rs.4,000/- was being paid, besides daily batta of Rs.10/-. The Tribunal, of course, did not accept his evidence and fixed the income at Rs.2,000/- per month. However, the Tribunal did not discard the profession of the deceased as a cook in the said hotel.

6. The Tribunal has taken the age of the deceased falling within the age group of persons between 35 and 40 years, applied multiplier '16' as per the second schedule entry, deducted 1/3rd towards personal expenses and taken Rs.16,000/- as annual income and applying multiplier factor, arrived at Rs.2,56,000/- towards loss of dependency. For conventional sums, lump sum amount of Rs.10,000/- was awarded. On the ground that the Tribunal did not properly appreciate the evidence on record and the Tribunal ought to have granted

Rs.5,00,000/- by any standards and sought to grant the balance amount.

7. The accident occurred in the year 2001. As per the decision of the Hon'ble Supreme Court, income of a labourer can be taken Rs.3,000/- per month or at least Rs.30,000/- per annum . It is not in dispute that the deceased was working as cook and is believed by the Tribunal which remained unchallenged. In such an event, certainly, it can be viewed that the petitioner was earning Rs.3,000/- per month and, thus, per annum, Rs.36,000/-, and after deducting 1/3rd as dependants are numbering three, the contribution would work out to Rs.24,000/-. The relevant multiplier factor, according to the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2], is '15' for the age group of persons between 36 and 40 years. Therefore, when multiplier '15' is applied, loss of dependency would work out to Rs.3,60,000/-.

8. Since the petitioners have shown the age of the deceased as 40 years, it has to be construed as '40' years completed and, therefore, the petitioners are also entitled to future prospects @ 30% in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma**[1] and in **Rajesh and others v. Rajbir Singh and others**[3], and it works out to Rs.1,08,000/-. Thus, towards loss of dependency as well as future

[2]. 2009 ACJ 1298
[3]. 2013 ACJ 1403

prospects, the petitioners are entitled to Rs.4,68,000/-. This apart, the petitioners are also entitled to Rs.50,000/- towards conventional sums as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[4]. Thus, in all, the petitioners are entitled to Rs.5,18,000/-. Though, the amount determined exceeds the claim made by the petitioners, but it is permissible to grant the amount determined towards compensation in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh and others**[5]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[6] and **Rajesh**[3].

9. Concerning rate of interest, the Tribunal awarded at 9% per annum on Rs.2,66,000/- the same is maintained, but on the enhanced amount of Rs.2,52,000/-, interest at 7.5% per annum is awarded in view of the decision rendered by the Hon'ble Supreme Court in **Rajesh**[3].

10. In the result, the appeal is allowed, and the order and decree, dated 26-10-2004, in O.P. No.29 of 2002, passed by the Tribunal, are modified, enhancing the compensation to Rs.5,18,000/- from Rs.2,66,000/- with interest at the rate of 9% per annum on the amount of Rs.2,66,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.2,52,000/- (Rupees

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[4]. 2014 ACJ 1430
[5] AIR 2003 SC 674
[6] 2012 ACJ 191 (SC)

two lakhs fifty two thousand) 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. The appellants – petitioners shall pay Court fee on the excess amount of Rs.18,000/- (Rupees eighteen thousand) within three months from the date of receipt of a copy of the order. 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

August 28, 2017.
Mgr