THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 567 of 2010

JUDGMENT:

This appeal is arising out of the order dated 14.12.2009 in O.P.No.129 of 2009 on the file of Motor Accidents Claims Tribunal, and in the Court of VI Additional District & Sessions Judge, Markapur (for short, 'the Tribunal').

2. The appellants herein, who are claimants before the Tribunal, filed O.P.No.129 of 2009 seeking a compensation of Rs.3,50,000/- on account of the death of their father i.e., Yeeragarla Bullaiah (hereinafter referred to as 'the deceased'), in a motor vehicle accident that occurred on 18.01.2009. Brief facts of the case are that on 18.01.2009, the deceased was going to Lakshmipuram from Thambadapalli village. And, when he got down from the bus at Dupadu Bus Centre and stood on the left side of the road and waiting to go Lakshmipuram, a parcel lorry bearing No. AP-9V-5878, which was coming from Guntur side and proceeding towards Kurnool side, dashed the deceased and ran over him. As a result, the deceased died instantaneously. Alleging that the accident and also the death of the deceased occurred solely due to rash and negligent driving by the driver of the parcel lorry, the claimants filed the Claim Petition seeking compensation as aforesaid, against respondents 1 and 2 who are the owner and insurer, respectively, of the offending lorry.

3. In support of the case of the claimants, PW1 was examined and Exs.A1 to A5 were marked; and in support of the respondents, Ex.B1 was marked.

4. The Tribunal, on consideration of the oral and documentary evidence available on record, partly allowed the petition by awarding a compensation of Rs.55,000/- with interest at 12% per annum along with proportionate costs and, and made the respondents 1 and 2 jointly and severally liable to pay the awarded compensation. Aggrieved by the quantum of compensation and seeking its enhancement, the appellants filed this appeal.

5. Heard the arguments of learned counsel for the appellants Sri Nutalapati Krishna Murthy. No arguments were advanced on behalf of the respondents.

6. Learned counsel for the appellant submits that the Tribunal has erroneously taken into consideration the age of the deceased as 65 years by the date of accident and awarded Rs.50,000/- under "no-fault liability" and Rs.5,000/- towards transportation. He submits that even as per the certified copy of the Inquest Report, Postmortem Report and Charge Sheet, the age of the deceased ought to have been taken as 50 years. Learned counsel, during the course of arguments, produced the Household Card (Ration card) and the Voter ID Card of the deceased. As per Voter ID Card, the deceased was aged about 54 years, and as per the Household Card (Ration card), his age was around 58 years by the date of accident. However, the learned counsel conceded that the deceased would have been around 55 years of age by the date of accident.

7. The Tribunal placed reliance on the evidence of PW1 in his cross-examination and came to the conclusion that as the deceased was a pensioner by the date of accident, his age would be around 65 years. The

Tribunal also came to the conclusion that the deceased was not doing any work and he was sitting at home.

8. The case of the appellants is that the deceased was a daily wage earner and used to earn Rs.4,000/- per month by doing Coolie work and he was also receiving pension. The Tribunal, by placing reliance on the testimony of PW1 in his cross-examination, came to the conclusion that the deceased was 65 years old as he was a pensioner. Even assuming that the deceased was 65 years old, the Tribunal did not adopt the appropriate multiplier '5', for a person of 65 years of age, as per Second Schedule of the Motor Vehicles Act.

9. Coming to the aspect of income of the deceased, in view of the ratio laid down by the Apex Court in Ramesh Singh v. Satbir Singh[1], *New India Assurance Company Ltd. v. Smt. Shanti Pathak*[2], *Oriental Insurance Co. Ltd. v. Syed Ibrahim*[3], *New India Assurance Co. Ltd., v. Kalpana (Smt)*[4], a decision of High Court of Karnataka at Bangalore in *Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*[5] and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahara*[6], the income of the deceased can be taken into consideration as Rs.3,000/- per month. After deducting 1/4th towards his personal expenditure, his contribution to his family would come to Rs.27,000/- per year. Therefore, even assuming the age of the deceased

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[1] MANU/SC/7089/2008

[2] MANU/SC/7776/2007

[3] MANU/SC/7915/2007

[4] (2007) 3 SCC 538

[5] MANU/KA/3721/2013

[6] MANU/WB/0139/2015

as 65 years, had the Tribunal adopted appropriate multiplier '5' as per the Second Schedule of the Motor Vehicles Act, the total loss of dependency would have exceeded the award of Rs.55,000/-.

10. As per the evidence of PW1, the deceased was 58 years old by the date of accident. But in view of testimony in the cross-examination, his age was taken into consideration as 65 years as he was said to be a pensioner. The Tribunal doubted the age and income of the deceased basing on the cross-examination of PW1. Though the Tribunal has drawn inference with regard to the age of the deceased as 65 years basing on the evidence of PW2 who did not give the exact age of the deceased either as 58 years or 65 years, the Tribunal should have looked into Ex.A2-Certified Copy of Inquest Report, Ex.A3-Postmortem report and Ex.A5-Charge sheet, which are the criminal record maintained by the police, wherein his age was shown as 50 years.

11. In view of the discrepancy in the age of the deceased, after considering the Exs.A2, A3 and A5 and taking into consideration the submission made by the learned counsel for the appellants, the age of the deceased can be taken as 58 years.

12. Taking the age of the deceased as 58 years, the appropriate multiplier as per the decision of the Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another**[7] case would be '9'. Therefore, by adopting the multiplier '9' as per **Sarla Verma**, the loss of dependency would come to Rs.27,000 x 9 = Rs.2,43,000/-. Therefore, the appellants are entitled for Rs.2,43,000/- towards loss of dependency. The Tribunal has awarded Rs.5,000/-

[7] (2009) 6 SCC 121

towards transportation and funeral expenses, and the same does not require any interference.

13. In view of the above, the compensation awarded by the Tribunal is enhanced from Rs.55,000/- to Rs.2,48,000/-, with interest at 7.5% per annum from the date of filing of claim petition till realization.

14. In the result, the appeal is allowed in part. No costs. Pending miscellaneous petitions, if any, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

10th March, 2017

KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

<u>M.A.C.M.A No. 567 of 2010</u>

March, 2017

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