HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2377 OF 2009

JUDGMENT:

Appellants - petitioners preferred the present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, complaining that the award of Rs.2,77,000/- towards compensation for the death of one M. Ravinder, who is husband of petitioner No.1 and father of petitioner Nos.2 to 6, in a road accident, by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Medak at Sanga Reddy (for short 'Tribunal') by the order and decree dated 09.06.2008 in M.V.O.P. No.57 of 2007, is inadequate, as their very claim has been for grant of Rs.5,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988.

2. Respondent Nos.1 and 2 are owner and insurer, respectively, of the Car bearing No.AP-23-F-4293 that involved in the accident.

3. The facts would reveal that on 01.07.2006, while M. Ravinder was crossing the road cautiously in front of Sandwik Company, in the outskirts of Muthangi village, on National Highway No.9, at about 1.10 Noon, the aforementioned car, driven by its driver in a rash and negligent manner, came and hit him, due to which, he sustained injuries and died while he was being shifted to the hospital. A crime was registered against the driver of the car by the police of Patancheru Police Station, initially under Section 337 of Indian Penal Code and subsequently altered to Section 304(A) of Indian Penal

Code. Claiming that the deceased was aged 38 years and was earning Rs.4,500/- per month by working as a labourer, sought the aforesaid amount.

4. Before the Tribunal, both the insured as well as the insurer filed their respective counters.

5. The submission of respondent No.1 has been that the insurer is liable to pay compensation as the vehicle involved in the accident is insured with it, and, therefore, sought to dismiss the claim petition against him.

6. Respondent No.2 opposed the claim raising various pleas without complaining any fundamental violation of terms and conditions of the insurance policy.

7. The Tribunal based on the said pleadings, framed three (3) issues.

8. During enquiry, petitioner No.1, who is wife of the deceased, examined herself as PW.1 besides one Ravinder as PW.2, as an eyewitness to the accident, and marked Exs.A-1 to A-5. On behalf of the Insurance Company, no oral evidence was adduced, however, on consent, marked a copy of the insurance policy of the vehicle involved in the accident as Ex.B-1.

9. The Tribunal recorded a finding in favour of the petitioners on issue No.1. So far as issue No.2 is concerned, recording the

findings that on the date of accident, insurance policy, which is marked as Ex.B-1, was in force, and is a package policy, and, therefore, the Insurance Company is liable to compensate the petitioners.

10. The Tribunal has taken the age of the deceased as 38 years. Concerning monthly earnings of the deceased, the Tribunal has arrived at Rs.2,100/- per month at Rs.70/- per day, as he was a daily wage labourer. Having deducted 1/3rd therefrom towards his personal and living expenses, arrived at Rs.16,800/- per annum towards contribution of the deceased to his family, and applying multiplier factor '15', arrived at Rs.2,52,000/- towards loss of dependency besides Rs.10,000/- towards loss of consortium to petitioner No.1, Rs.15,000/- towards loss of estate and funeral charges, and, thus, awarded a total sum of Rs.2,77,000/- towards compensation with interest at 7.5% per annum.

11. On the ground that the amount awarded is not fair and adequate, the present miscellaneous appeal is preferred stating in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and was not right in taking the daily wage at Rs.70/- and computing the compensation, and, therefore, sought to grant the balance amount.

12. Heard Sri P. Srihari Nath, learned counsel for the petitioners (appellants), and Sri N. Mohan Krishna, learned Standing counsel for respondent No.2 - Insurance Company.

13. Though entered appearance, there is no representation for respondent No.1 - insured.

14. The Tribunal has mulcted liability on the Insurance Company and that the liability to pay the amount was joint and several on respondent Nos.1 and 2, as they are insured and insurer, respectively, of the car involved in the accident.

15. The submission of the learned counsel for the petitioners (appellants) is that the Hon'ble Supreme Court has construed the income of a labourer at Rs.3,000/- per month, and, therefore, the Tribunal was not justified in taking daily wage of the deceased at Rs.70/-. It is true, in **Laxmi Devi v. Mohammad Tabbar[1],** a Division Bench of the Hon'ble Supreme Court upheld the decision of the High Court that in the present days, even an unskilled labourer easily earns Rs.100/- per day. It is true, no concrete reasons have been assigned by the Tribunal in taking the daily wage of the deceased at Rs.70/- as submitted by the learned counsel for the petitioners. Simultaneously, it is to be stated that no legally acceptable evidence is being placed by the petitioners to prove that the deceased was earning Rs.4,500/- per month. Therefore, taking into consideration that the

[1] 2008 ACJ 1488

deceased must be earning Rs.2,500/- per month, which works out to or Rs.30,000/- per annum, and since number of dependants on the deceased are six (6), deducting 1/4th therefrom towards his personal living expenses in view of the law declared by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2], when the balance is worked out, the contribution of the deceased to his family would work out to Rs.22,500/- (Rs.30,000/- x ¼)/.

16. The Tribunal has taken the age of the deceased as 39 years and multiplier factor '15', as provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma**[1]. When the contribution of Rs.22,500/- is capitalized with multiplier factor '15', the loss of dependency would work out to Rs.3,37,500/-. The petitioners are also entitled to 30% thereof towards future prospects additionally as per the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[3], which works out to Rs.1,01,250/-. When the same is added to the loss of dependency, Rs.3,37,500/-, the petitioners would become entitled to Rs.4,38,750/- under this head. Besides the same, the petitioners are also entitled to a conventional sum of Rs.50,000/-.

17. Thus, the petitioners are totally entitled to a sum of Rs.4,88,750/- (Rupees four lakhs eighty eight thousand seven hundred and fifty only) as against Rs.2,77,000/- granted by the Tribunal and the same is accordingly granted while maintaining the rate of interest

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2 (2009) 6 SCC 121

3 2013ACJ1403 = 2013(4)ALT35

at 7.5% per annum on the enhanced amount as well from the date of petition till realization.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order and decree under challenge by enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending stand disposed of.

A. SHANKAR NARAYANA, J

January 6, 2017.
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