HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2232 OF 2004

JUDGMENT:

Having got dissatisfied with the award of Rs.1,07,000/- as against the claim of Rs.2,75,000/-, the parents of the deceased - Baba Fakruddin, preferred the present Civil Miscellaneous Appeal by the order and decree, dated 18.08.2003, in M.V.O.P. No.497 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Kadapa (for short 'the Tribunal'), requesting to grant balance amount under Section 173 (1) of the Motor Vehicles Act, 1973.

2. The appellants herein are the petitioners, who are parents of the deceased, in the aforesaid MVOP, while respondent Nos.1 and 2, who are owner and insurer of Lorry bearing registration No.TN 23D 7279, are respondent Nos.1 and 2 respectively.

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

4. Heard Sri Pasam Srinivasa Reddy, learned counsel for the appellants - petitioners, and Sri V. Srinivasa Rao, learned counsel for respondent No.2 - Insurer. In fact, the present appeal was dismissed against respondent No.1 for default, by order, dated 13.04.2016, but, since it remained *ex parte* before the Tribunal being the owner of the vehicle, its absence makes any difference as it suffered decree.

5. Now, the only short question is:

Whether the amount of compensation granted by the Tribunal is just and adequate?, and whether the petitioners are entitled to the balance amount sought for?

6. It is not in dispute that the deceased died in unmarried status and the petitioners projected that the deceased was earning Rs.4,000/- per month on Cool-drink shop, whereas the Tribunal fixed it at Rs.1,500/- per month and taken the multiplier factor basing on the younger parents' age and deducted 1/3rd towards personal expenses and arrived at Rs.90,000/- towards dependency. Besides the same, the Tribunal has also granted Rs.15,000/- towards loss of estate; Rs.1,000/- towards funeral expenses and Rs.1,000/- towards transport charges, thus, making a total of Rs.1,07,000/- towards compensation.

7. The learned counsel for the appellants - petitioners would submit that the Tribunal went wrong in taking Rs.1,500/- as the monthly earnings of the deceased, despite the fact that the deceased was running a cool-drink shop and earning Rs.4,000/- per month. He places reliance on a decision rendered by a Single Judge of Delhi High Court in **Bharat Gulluani & others v. Aslam & another**[1]**,** wherein the learned Single Judge relied on the law laid down by the Hon'ble Supreme Court to the extent that in plethora of cases that while assessing the income of the deceased in motor accident cases, the Tribunals should bear in mind that the same should be assessed on

[1]. 2009 (1) ACC 192

the basis of the cogent and the reliable evidence produced and duly proved on record.

8. It is not in dispute that the deceased was running a cool-drink shop. Therefore, even by guess work his earnings can be fixed at Rs.2,000/- per month or Rs.24,000/- per annum as he died at his prime youth. The Tribunal also went wrong in deducting 1/3rd, in view of the law laid down in **Sarla Verma & others v. Delhi Transport Corporation and another**[2] and also the settled principles of law that half of the income has to be construed as contribution to the family consisting of parents, younger brothers or sisters in case they are dependents. Therefore, 50% thereof has to be deducted towards his personal expenses and remaining has to be construed as the contribution to his family. In such an event, Rs.1,000/- has to be deducted, and when the same is deducted, it works out to Rs.12,000/- per year [Rs.1,000/- x 12]. The age of the deceased has to be reckoned in applying multiplier factor as per the decisions of the Hon'ble Supreme Court in **Amrit Bhanu Shali v. National Insurance Company Limited**[3] and **Munna Lal Jain v. Vipin Kumar Sharma**[4]. Therefore, multiplier factor '18' is applicable, and when '18' is applied, the contribution would work out to Rs.2,16,000/- [Rs.12,000 x 18]. The other amounts granted by the Tribunal of Rs.15,000/- towards loss of estate and Rs.1,000/- towards transport charges are maintained, while enhancing the amount of

---

2. (2009) 6 Supreme Court Cases 121
3. 2012 AIR SCW 3901
4. (2015) 6 SCC 347

Rs.1,000/- granted by the Tribunal towards funeral expenses to Rs.5,000/- as the same is on lower side. Thus, in all, the petitioners are entitled to Rs.2,37,000/- [Rs.2,16,000/- + Rs.15,000/- + Rs.1,000/- + Rs.5,000/-] as the compensation to which the petitioners are legitimately entitled.

9. Concerning the rate of interest, the Tribunal has granted 9% per annum. The same is not disturbed on the amount awarded by the Tribunal. However, on the enhanced amount of Rs.1,30,000/-, interest is granted at the rate of 7.5% per annum from the date of petition in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[5].

10. In the result, the appeal is allowed in part, and the order and decree, dated 18.08.2003, in M.V.O.P. No.497 of 2000, passed by the Tribunal, are modified, enhancing the compensation to Rs.2,37,000/- from Rs.1,07,000/- with interest at the rate of 9% per annum on the amount of Rs.1,07,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,30,000/- from the date of petition till realization. The enhanced compensation amount shall be apportioned between the petitioners in the same proportion in which the original compensation amounts were directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

---

[5]. 2013 ACJ 1403

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

July 31, 2017.
Mgr