HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2768 OF 2009

JUDGMENT:

The present appeal is preferred by the appellants - petitioners dissatisfied with the award of Rs.2,58,728/- as compensation as against the claim of Rs.11,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act'), by the order and decree, dated 03.03.2009, in M.V.O.P. No.298 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum - V Additional District Judge, Vijayawada (for short 'Tribunal'), seeking for enhancement of compensation.

2. The appellants herein, who are wife and children of Atluri Venkateswara Rao, are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 16TU 2531, respectively, are respondents as such, in the MVOP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in MVOP.

4. The petitioners case is, that on 29.12.2005, the husband of petitioner No.1 and father of petitioner Nos.2 and 3, Atluri Venkateswara Rao, who is deceased herein, was proceeding on his Scooter bearing registration No. AP16R 8175 from his business place

i.e., Vijayawada to a hotel called 'Our Place Hotel' situate at National Highway No.5 Bypass Road in Tadepalli, and when he reached near Kanakadurgamma Varadhi at about 9.00 p.m., a lorry bearing registration No.AP 16TU 2531 driven in a rash and negligent manner by its driver at high speed, hit the scooter from behind, due to which, the deceased had fallen down and due to serious head injury died instantaneously.

i) The Station House Officer, Krishnalanka Police Station registered a case in Crime No.377 of 2005 under Section 304-A IPC, against the driver of the lorry.

ii) The petitioners claiming that the deceased was running business in the name and style 'Andhra Fancy & Novelty Stores' at Besant Road, Vijayawada, earning Rs.65,000/- per month, owning Acs.22.00 of land in Boddanapalli village, Agiripalli Mandal, Krishna District, with mango grove and personally doing agricultural operations, earning Rs.1,25,000/- per annum thereon and, thus, a monthly income of Rs.16,000/-, being an Income Tax Assessee, sought a sum of Rs.11,00,000/- as compensation.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2, its insurer, opposed the claim, alleging that the accident occurred due to collision and, therefore, the insurer

of the scooter is a necessary party and non-impleadment makes the claim bad and, ultimately, sought to dismiss the claim petition attributing rash and negligent driving to the deceased.

7. The Tribunal framed the following four issues about the responsibility for the accident.

"1. Whether the deceased A. Venkateswara Rao died in a motor vehicle accident on 27.12.05 due to the rash and negligent driving of driver of lorry No.AP16TU 2531 of R1 as claimed?

2. If so, what is the correct age and income of the deceased by the accident?

3. Whether the petitioners are entitled to the compensation as prayed for? If so, from whom and what amount?

4. To what relief? "

8. In an inquiry, petitioner No.1 examined herself as PW.1, besides examining one M. Umesh as PW.2 and marked Exs.A-1 to A-8. On behalf of respondent No.1, one K. Anand Kumar was examined as RW.1 and marked Ex.B-1, copy of the insurance policy.

9. Heard Sri K. Ramakoteswara Rao, learned counsel for the appellants – petitioners and Sri B. Devanand, learned standing counsel for respondent No.2 - Insurer. Despite service of notice on respondent No.1, none appears for him.

10. The Tribunal has found issue No.1 in favour of the petitioners holding that due to rash and negligent driving of the driver of the lorry, the accident had occurred resulting in the death of the deceased instantly.

i) That finding recorded by the Tribunal cannot be upset, as nothing is brought out in the evidence of RW.1 to attribute any rash and negligent driving to the deceased, nor there is anything to show that the deceased contributed to the accident. The very fact that the lorry came from behind and hit the scooter gives an inescapable inference that the driver of the lorry alone was negligent in driving the vehicle, and thereby caused the accident.

11. So far as the finding recorded on issue No.2 as to the age and income of the deceased is concerned, admittedly, the deceased was 59 years old on the date of accident. His date of birth is shown in the income tax returns filed by him for the assessment years 2004-05 and 2005-06 as 27.09.1946. On the date of accident, he has completed 59 years and running 60th year. Therefore, the age of the deceased as 59 years, taken by the Tribunal cannot be faulted.

i) So far as the income of the deceased is concerned, the Tribunal has considered Exs.A-6 and A-7, which are income tax returns showing the annual income of the deceased at Rs.61,535/- for the assessment year 2004-05, and Rs.65,179/- for the assessment year

2005-06, and the net income as Rs.45,700/- and Rs.57,953/- respectively, and taken Rs.45,700/- as the annual income. The Tribunal, though, referred to the agricultural income of Rs.1,25,000/- shown by the petitioners, holding that the agricultural income of the deceased cannot be shown as the income of the deceased alone, rejected to consider in assessing the loss of dependency of the petitioners and, therefore, has taken only the amount of Rs.45,700/- as annual earnings; deducted 1/3rd amount towards his personal living expenses and the balance, Rs.30,466/- as the contribution to the family. The Tribunal has taken the multiplier factor '8' from the table given in the second schedule to Section 163-A of the Act and arrived at Rs.2,43,728/- towards loss of dependency. Besides the same, the Tribunal has granted Rs.2,500/- towards loss of estate; Rs.2,500/- towards funeral expenses and Rs.10,000/- towards loss of consortium to the 1st petitioner, making a total of Rs.2,58, 728/-, apportioning the same amongst the petitioner Nos.1 to 3 at Rs.1,58,728/-; Rs.50,000/- and Rs.50,000/- respectively, with interest at 6% per annum from the date of petition till realization. The Tribunal has also given a positive finding basing on the admissions of RW.1 that the policy was in force on the date of accident and the driver of the lorry was holding valid subsisting driving license, as no violation of terms and conditions of the policy were raised by the insurer.

12. Now, turning to whether the Tribunal was right in taking Rs.45,700/- per annum and rejecting the stand of the petitioners in so far as the source of income from agriculture is concerned, a perusal of Exs.A-6 and A-7, which are material to decide the present issue, would show that for the year 2004-05, the total profit income on the turnover of his business was shown as Rs.63,097/-, and a tax of Rs.1,450/- being paid by the deceased; thus, when the amount towards tax paid by the deceased is deducted, the balance would work out to Rs.61,647/-. For the year 2005-06, the income is shown as Rs.66,420/-. No tax was calculated in view of rebate being considered as could be seen from Ex.A-6. Thus, when aggregate is taken Rs.66,420 + Rs.61,647 % 2, the average annual income works out to Rs.64,034/- per annum.

13. Turning to what would be the loss of dependency in terms of agricultural income is concerned, the learned counsel for the appellants - petitioners has placed on certain authorities.

i) In **S. Thenmai and others v. APSRTC rep.by its Managing Director**[1], a learned Single Judge of this Court has taken the agricultural income at Rs.60,000/- per annum as against the claim of the claimants at Rs.70,000/- per annum. But, the relevant details are not finding place as to what was the total extent owned and possessed by the deceased therein and the crops raised.

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1. 2015 (3) ALT 653

ii) In **V. Subbulakshmi & others v. S. Lakshmi & another**[2], the income tax returns filed by the petitioners therein were subsequent to the accident that took place on 7.5.1997, whereas income tax returns were filed on 23.6.1997. In that context, the Hon'ble Supreme Court held that the income tax returns cannot be relied upon.

iii) In **Sohel Sardar Khan v. S. Rama Pathi Rao and another**[3] rendered by a Division Bench of this Court, the income tax returns were considered, but the deceased was a salaried employee and no agricultural income was forthcoming.

iv) In **New India Assurance Company Limited v. Yogesh Devi and others**[4], the Hon'ble Supreme Court relied on **State of Haryana v. Jasbir Kaur**[5] and extracted paragraph No.8 therein thus:

> "12. In *Jasbir Kaur case* the claim was based on an assertion that the deceased was an agriculturist earning an amount of Rs.10,000 per month by cultivating his land. Dealing with the question, this Court held: (SCC p.487, para 8)
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> > *"8.* …. The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, a possibility that the claimants may be required to engage persons to look after the agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered." "

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[2]. AIR 2008 SC 1256
[3]. 2013 (3)ALD 495 (DB)
[4]. (2012) 3 SCC 613
[5]. (2003) 7 SCC 484

The Hon'ble Supreme Court holding that the deceased therein was managing three minibuses, personally driving one bus and on account of his death, the claimants may have to engage some competent person to manage the asset which, in turn, would require some payment to be made to such a manager, and to the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset, and therefore, the amount required for engaging the service of a manager and the salary payable to a driver would be the loss to the claimants.

14. Thus, viewed, certainly, petitioner No.1 herein, who is the wife of the deceased, has to engage some person to manage about 22 acres of dry land held by the deceased as could be seen from the pattadar pass book of the deceased marked as Ex.A-8, though, nothing is placed to arrive at certain amount scientifically, but the salary of a person acting as manager can be notionally fixed at Rs.5,000/- per month by a reasonable conjuncture, which would work out to Rs.60,000/- per annum, since the petitioners claimed that the entire extent was covered by mango garden, and that assertion made by PW.1 stood undisturbed as nothing is brought out in the cross examination to disbelieve the same. So, when Rs.60,000/- is added to Rs.64,034/-, it works out to Rs.1,24,034/-. Since 1/3rd thereof has to be deducted in view of the fact that the petitioners are three (3) in number and, of course, petitioner Nos.2 and 3 cannot be construed as

dependants, still, 1/3rd has to be deducted towards personal living expenses of the deceased. 1/3rd of Rs.1,24,034/- towards personal living expenses of the deceased would come to Rs.41,345/-. When the same is deducted from Rs.1,24,034/-, the contribution to the family would work out to Rs.82,689/-.

15. Since the deceased was 59 years old, the relevant multiplier factor is '9' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[6]. When the contribution is capitalized with the multiplier factor '9', the loss of dependency would work out to Rs.7,44,201/- [Rs.82,689/- x 9]. The petitioners are also entitled to 15% additionally towards future prospects in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[7]. Towards 15%, the petitioners are entitled to Rs.1,11,630/-. The petitioners are also entitled to a conventional sum of Rs.50,000/- placing reliance on the judgment of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[8], where such an amount granted by the Tribunal was approved. Thus, in all, the petitioners are entitled to Rs.9,05,831/-, rounding it off to Rs.9,05,840/-.

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6 (2009) 6 Supreme Court Cases 121
7. 2013 ACJ 1403
8. 2014 ACJ 1430

16. The Tribunal granted the rate of interest at 6% per annum, and the petitioners have questioned the same in the grounds of appeal. Though, no authority is quoted in the grounds of appeal, still, in view of the decision of the Hon'ble Supreme Court in **Rajesh** (Supra), rate of interest at 7.5% per annum can be granted and, accordingly, the same is granted on the entire amount awarded to the petitioners.

17. In the result, the appeal is allowed in part, and the order and decree, dated 03.03.2009 in MVOP No.298 of 2006 passed by the Tribunal are modified enhancing the compensation to Rs.9.05,840/- (Rupees nine lakhs five thousand eight hundred and forty) from Rs.2,58,728/- with interest at 7.5% per annum on the entire compensation amount from the date of petition till realization. The enhanced compensation shall be apportioned among 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.

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

A. SHANKAR NARAYANA, J

January 20, 2017.
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