HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. Nos.3847 AND 4410 OF 2004

COMMON JUDGMENT:

The former appeal (C.M.A. No.3847 of 2004) is preferred by the petitioners in M.V.O.P. No.281 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Chittoor District at Tirupati (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), seeking enhancement of compensation on the ground that the amount of Rs.8,07,912/- awarded by the Tribunal, by order, dated 26.07.2004, as against the claim of Rs.14,00,000/- laid under Section 166 (1)(c) of the Act is a meager sum, whereas the latter appeal (C.M.A. No.4410 of 2004) is filed by the erstwhile Andhra Pradesh State Road Transport Corporation, questioning the compensation amount awarded by the Tribunal is excessive and exorbitant.

2. The appellants in the former appeal who are respondents in the latter appeal are petitioners in the aforesaid M.V.O.P., while respondent - Corporation in the former appeal which is appellant in the later appeal is respondent.

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

4. Heard Sri P. Govind Reddy, learned counsel for the petitioners, and Sri Aravala Rama Rao, learned Standing Counsel for respondent - Corporation.

5. The claim was laid under Section 166 of the Act by the petitioners requesting for grant of Rs.14.00 lakhs as compensation for the death of deceased - B. Venkataramaiah, husband of petitioner No.1 and father of petitioner Nos.2 and 3 and son of petitioner No.4. The fact-situation occurring in the instant case is not in dispute. Therefore, there is no need to advert to the facts.

6. The Tribunal having framed three issues and the evidence of PWs.1 to 3 and Exs.A-1 to A-8 on behalf of the petitioners and RW.1 and Ex.B-1 on behalf of Corporation, finding that the deceased was working as Work Inspector, Grade-III in Rural Water Supply (PR) Sub-Division, Piler, drawing a monthly gross salary of Rs.7,728/- as per Ex.A-8, salary certificate issued by the Deputy Executive Engineer, Rural Water Supply, and the evidence of PW.3, who proved the contents thereof, arrived at Rs.87,336/- as the earnings per annum, deducted 1/3rd thereof towards personal living expenses of the deceased and taking the contribution of Rs.58,224/-, and applying the multiplier factor ‘13’ as the deceased was aged 47 years on the date of accident, arrived at Rs.7,56,912/-. Besides the same, the Tribunal has granted Rs.15,000/- towards loss of consortium; Rs.10,000/- towards guidance, love and affection; Rs.25,000/- towards loss of estate and

Rs.1,000/- towards funeral expenses and, thus, a total sum of Rs.8,07,912/- was granted, awarding interest at 9% per annum thereon, and also apportioning the compensation among the petitioners.

7. Questioning the said order passed by the Tribunal, the rival parties preferred the present appeals.

C.M.A. No.3847 of 2004

8. There is no need to refer to the salary certificate once again. The last drawn salary taken by the Tribunal cannot be interfered with, as statutory deductions are not finding place. When the statutory deductions are deducted from the gross salary, the monthly earnings of the deceased would come to Rs.7,278/- as referred to in Ex.P-8 or Rs.87,336/- per annum,. Since the dependants are four in number, in view of the law laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], 1/4th deduction towards personal living expenses of the deceased is permissible. When 1/4th of the annual earnings is deducted, his contribution to the family would work out to Rs.65,502/- (Rs.87,336 - Rs.21,834/-) per annum. The relevant multiplier factor is '13' even according to the table formulated by the Hon'ble Supreme Court in **Sarla Verma**[1]. Therefore, when the multiplier factor '13' is applied to the multiplicand, the loss of dependency would work out to Rs.8,51,526/- (Rs.65,502 x 13). The deceased was a permanent employee and,

[1]. 2009 ACJ 1298

therefore, even according to the law declared by the Hon'ble Supreme Court in **Sarla Verma**[1] and **Rajesh and others v. Rajbir Singh and others**[2], the petitioners are entitled to 30% of the loss of dependency towards future prospects. Thus, a sum of Rs.2,55,458/- (30% of Rs.8,51,526/-) would account for 30% of the loss of dependency determined, to which the petitioners are entitled towards future prospects. Thus, the petitioners are entitled to a total sum of Rs.11,06,984/- towards loss of dependency including future prospects. The amounts of Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of guidance, love and affection, Rs.25,000/- towards loss of estate and Rs.1,000/- towards funeral expenses granted by the Tribunal are maintained. Thus, in all, the petitioners are entitled to Rs.11,57,984/- (Rupees eleven lakhs fifty seven thousand nine hundred and eighty four) as against Rs.8,07,912/- awarded by the Tribunal.

9. Concerning the rate of interest, the Tribunal awarded at 9% per annum on Rs.8,07,912/- the same is maintained, but on the enhanced amount of Rs.3,50,072/-, interest at 7.5% per annum is awarded in view of the decision rendered by the Hon'ble Supreme Court in **Rajesh**[2].

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[2]. 2013 ACJ 1403

C.M.A. No.4410 of 2004

10. The learned standing counsel for Corporation relying on the evidence of RW.1, sought to attribute rash and negligent driving to the rider of the motorcycle, pillion of which the deceased was riding, but, certainly, the evidence of RW.1, driver of the bus, would not gain precedence over the documentary evidence through Exs.A-1 to A-3 and the oral evidence of PW.2 showing RW.1 as an accused, on account of whose rash and negligent driving, the accident has occurred, resulting in the death of the deceased. When a positive finding based on facts was recorded by the Tribunal, unless it is shown that such a finding suffers from utter perversity, it is difficult to interfere with the said finding recorded by the Tribunal. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

11. In the result, appeal in C.M.A. No.3847 of 2004 is allowed in part, and the order and decree, dated 26-07-2004, in M.V.O.P. No.281 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.11,57,984/- (Rupees eleven lakhs fifty seven thousand nine hundred and eighty four) from Rs.8,07,912/- awarded by the Tribunal with interest at the rate of 9% per annum on the amount of Rs.8,07,912/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.3,50,072/- (Rupees three lakhs fifty thousand and seventy two) from the date of petition till realization, while appeal in C.M.A. No.4410 of 2004 is dismissed.

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. In the circumstances, 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 31, 2017.
Mgr