HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3166 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the claimants, under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 28.06.2001 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Medak at Sanga Reddy, on the ground that the award of Rs.2,45,000/- towards compensation, as against the claim of Rs.7,25,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the death of Miryala Raganna, who died in the road accident that took place on 14.07.1994, seeking enhancement.

2. Petitioner No.1 is the wife and petitioner No.2 is the daughter of the deceased.

3. There is no dispute in regard to the manner in which the accident took place leading to the death of the deceased.

4. The only ground urged is that compensation awarded is not in tune with the principles laid down by the Hon'ble Apex Court.

5. The Tribunal has taken Ex.A-5, salary certificate of the deceased, into consideration which shows his basic salary as Rs.4,700/- and house rent allowance (HRA) as Rs.700/-. Both put together, a sum of Rs.5,500/- (Rs.5,400/-) was considered by the

Tribunal and out of the said amount, towards contribution of the deceased to his family, taken Rs.2,500/- per month or Rs.30,000/- per annum, taking the age of the deceased as 50 years, since date of birth of the deceased was recorded as 30.6.1945, applying multiplier factor 7.5, arrived at Rs.2,25,000/- towards loss of dependency, besides granting Rs.15,000/- towards non-pecuniary damages and Rs.5,000/- towards loss of consortium to petitioner No.1, making a total of Rs.2,43,000/-, and awarded the same with interest at 9% per annum, making both the respondent jointly and severally liable to pay the said amount and apportioned the amount between petitioner Nos.1 and 2.

6. In the grounds of appeal, it is contended that the Tribunal ought to have deducted 1/4th and not 1/3rd towards personal expenses of the deceased; the salary ought to have taken as Rs.6,000/- but not Rs.5,500/-, and ought to have awarded interest at 12% per annum, and, therefore, sought to grant the balance amount.

7. Heard Sri K. Murali Krishna, learned counsel for the appellants, and Sri N.S. Bhaskar Rao, learned counsel for respondent No.2 - the United India Insurance Company Limited, and perused the material on record.

8. Despite service of notice on respondent No.3 - owner of the lorry bearing No.ABT - 4665, none appears for him.

9. Against respondent No.1, driver-cum-owner of the ambassador car bearing No.AEF - 414 (Taxi Cab), the appeal was

dismissed for default, but, he remained *ex parte even* before the Tribunal.

10. PW.3 has spoken about Ex.A-5, salary certificate issued by the employer of the deceased, and, according to his evidence, he was deputed to give evidence on behalf of the company (employer of the deceased), in which the deceased was working. His evidence is clear that the deceased was drawing basic salary of Rs.4700/- and certain other amounts, which are PF at 8% - Rs.376/-, House Rent Allowance at 15% - Rs.705/-, Bonus 20% - Rs.940/-, LTC - Rs.196/-, Superannuation - Rs.235/-, Dearness Allowance (DA) - Rs.19/-, Leaves - Rs.679/-, gratuity at 4.48% Rs.211/-, making a total of Rs.8,061/-. Amongst them, the first three components can be taken for the purpose of arriving at the income, which would work out to Rs.5,781/- (Rs.4700/- + Rs.376/- + Rs.705/-) and 1/3rd thereof would work out to Rs.1927/-, which has to be deducted towards personal living expenses of the deceased. The remaining Rs.3,854/- would be the contribution of the deceased to his family per month which works out to Rs.46,248/- per annum. Since the deceased was 50 years old at the relevant time, the relevant multiplier factor is '13' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1]**,** and, when the same is applied, the loss of dependency works out to Rs.6,01,224/- (Rs.46,248/- x 13). Since the deceased was '50' years old at the relevant time, the petitioners are

[1] **(2009) 6 SCC 121 SC - DB**

also entitled to 15% out of the loss of dependency towards future prospects in view of the law declared by the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[2] and the same works out to Rs.90,184/- (Rs.6,01,224/- x 15%). Thus, the petitioners are entitled to a sum of Rs.6,91,408/- towards loss of dependency including future prospects. In view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[3]**,** the petitioners are also entitled to Rs.50,000/- towards conventional sums as against the amounts awarded by the Tribunal out of which petitioner No.1 is entitled to Rs.30,000/- towards consortium.

11. Thus, the petitioners are entitled to a total amount of Rs.7,41,408/- (Rupees seven lakhs forty one thousand four hundred and eight only) as against Rs.2,45,000/- awarded by the Tribunal, and the same is accordingly granted. Though, the compensation awarded is more than the amount claimed by the appellants, there is no embargo to grant the same, when on determination of just compensation by applying structural formula, in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[4] **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's Case**[2]**.** However, the petitioners are directed to pay Court fee on the amount of Rs.16,408/-, which is excess of the amount claimed by them

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[2] **2013 ACJ 1403 (SC) (F)B**

[3] **2014 ACJ 1430 (SC) (FB)**

towards compensation, within a period of three (3) months from the date of receipt of a copy of the order. The enhanced compensation shall be apportioned between the petitioners in the same ratio as ordered by the Tribunal.

12. However, the rate of interest at 9% per annum is maintained on the amount of Rs.2,45,000/- granted by the Tribunal, but, the enhanced amount of Rs.4,96,408/- shall carry interest at 7.5% per annum, in view of the decision of the Hon'ble Supreme Court in **Rajesh**[2], from the date of petition till realisation.

13. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order and enhancing the compensation, as indicated above. 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

September 8, 2017.

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[4] AIR 2003 SC 674
[5] 2012 ACJ 191 (SC)