HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2030 OF 2004

JUDGMENT:

Heard Sri K. Jagadishwar Reddy, learned counsel for the appellant - petitioner (claimant), and Sri K. Phalguna Rao, learned standing counsel for respondent No.2 - insurance company viz., the National Insurance Company Limited, and perused the material on record.

2. The present Civil Miscellaneous Appeal is preferred by the claimant against the order and decree dated 31,01,2004 in O.P. No.414 of 1999 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Nalgonda, seeking enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988.

3. So far as the fact-situation is concerned, the petitioner is no other than the wife of the deceased viz., Pgilla Sudhakar Reddy, who is a lorry driver, driving the DCM Van bearing No.AP-9T-1913 at the relevant time. There was head on collision. The Tribunal discarded the plea taken by the petitioner that one headlight was on and the other headlight was not there for the lorry and, in fact, as could be seen from the arguments advanced by both sides and the observations made by the Tribunal, the complaint was lodged by the driver of the lorry and charge sheet was, in fact, lodged against the deceased by

Kattangur Police Station. However, the DCM van driver, who is the deceased, is no more, it appears, final report was filed asking to close the case.

4. Though, it is contended that the cleaner of the DCM Van made an attempt to lodge a report, the complaint was not received by Kattangur Police Station, and he went to a nearby police station Narketpally, but, meanwhile, the driver of the lorry lodged the complaint with Kattangur police station. But, in view of the positive finding recorded by the Tribunal, the very same argument does not merit in the present appeal and, therefore, the said argument is negatived.

5. Now the point that arises for consideration is whether the amount awarded by the Tribunal is just and adequate?

6. The learned counsel for the petitioner pleads to apply the multiplier factor in the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1]**.** The deceased was aged 25 years according to the inquest report marked as Ex.A-2. There cannot be any dispute so far as earnings are concerned. The Tribunal has taken it Rs.1,500/- per month. The accident occurred in the year 1999. It can be construed that he must be earning Rs.2,000/- per month during the relevant time which is nearer to the wages fixed in the Minimum Wages Act, 1923.

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

Hence, considering that he would be drawing Rs.2,000/- per month, when 1/3rd i.e. Rs.667/- (Rs.2,000/- x 1/3) is deducted towards his personal living expenses, his contribution to the family works out to Rs.1,333/- or Rs.16,000/- per annum. Since the deceased was aged 25 years, relevant multiplier factor is '18'. Therefore, the loss of dependency works out to Rs.2,88,000/-. Since 50% thereof is to be deducted, as negligence on the deceased was attributed to the extent of 50%, the loss of dependency would work out to Rs.1,44,000/-. Since the deceased was aged 25 years, 50% of the loss of dependency is to be awarded towards future prospects in view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[2] and **Sarla Verma**[1], and, therefore, an amount of Rs.72,000/- is awarded additionally. The loss of dependency including future prospects would work out to Rs.2,16,000/-. Besides the same, the petitioner is also entitled to Rs.50,000/- towards conventional sums in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v. National Insurance Company**[3].

7. Thus, the petitioner is entitled to a total compensation of Rs.2,76,000/- (Rupees two lakhs seventy six thousand only) as against Rs.1,00,000/- awarded by the Tribunal, and the same is accordingly granted. Though, the compensation awarded is more than the amount claimed by the petitioner, there is no embargo to grant the same, on

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

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

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 petitioner is directed to pay Court fee on the amount of Rs.76,000/-, which is more than the amount claimed by them towards compensation, within a period of two months from the date of receipt of a copy of the order.

8. The Tribunal has apportioned the compensation amongst the petitioner, who is the wife of the deceased, and respondent Nos.3 and 4, who are the parents of the deceased, equally i.e., at the ratio of 1/3rd each. The learned counsel for the petitioner seeks to modify the same on the ground that the petitioner is the wife of the deceased, so she should be entitled to more than the share apportioned by the Tribunal. The apportionment shall be as directed by the Tribunal at the same ratio in regard to enhanced compensation also. However, out of the conventional sum of Rs.50,000/-, petitioner, who is wife of the deceased, is entitled to Rs.30,000/- towards consortium.

9. The rate of interest at 9% per annum is maintained on the amount of Rs.1,00,000/- granted by the Tribunal, but, on the enhanced amount of Rs.1,76,000/-, interest is granted 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.

---
[4] **AIR 2003 SC 674**

10. 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 14, 2017.
PV

[5] **2012 ACJ 191 (SC)**