THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.4589 OF 2004
And
Cross-Objections (SR) No.25952 OF 2009

COMMON JUDGMENT:

Aggrieved over the Award of Rs.2,40,000/- towards compensation for the death of one Hemadri Naidu, who is the husband of the 1st petitioner, father of the petitioners 2 and 4 and son of the petitioner No.3, by order dated 11.8.2004 in M.V.O.P. No.102 of 1992 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-Principal District Judge, Chittoor, the present Appeal is preferred on the ground that the amount granted is exorbitant and excessive, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') challenging the Award and Decree passed by the Tribunal.

2. The respondents 1 to 4/claimants 1 to 4, on the other hand, dissatisfied with the Award of Rs.2,40,000/- for the death of one Hemadri Naidu, who is the husband of the 1st petitioner, father of the petitioners 2 and 4 and son of the petitioner No.3, as against the claim of Rs.9,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, filed the aforesaid Cross-Objections requesting to grant balance amount.

3. The death of the deceased occurring in a road accident is not in dispute. His treatment and later succumbing to injuries is also

not in dispute. Admittedly, he is an agriculturist, which is also not in dispute in view of the documents filed by the petitioners, which are marked as Exs.A4 and A5. Even, the petitioners examined P.Ws.2 to 4 to prove that the deceased was an agriculturist, owning and possessing more than 23 acres of land and maintaining the family from the income derived therefrom.

4. Before the tribunal, the 1st respondent remained *ex parte*. A.P. State Road Transport Corporation resisted the claim by raising various pleas, which are unnecessary to deal with.

5. The Tribunal framed three issues and also to ascertain responsibility as well as the claim to which the petitioners are entitled to compensation, in case they succeed in proving the relevant factors.

6. The Tribunal on Issue No.1 held that due to rash and negligent driving of the driver of RTC Bus, accident occurred resulting in the death of the deceased. On Issue No.2, the Tribunal noting that Exs.A4, Certified Copy of Pattadar Pass Book, shows that the family of the deceased holding 23 acres of agricultural land and Exs.A5 to A8 which are certified copies of pass book issued by the Electricity Department and observing that after the demise of the deceased there would be supervisory loss to the family and in that regard taken supervisory loss at Rs.18,000/- per annum, deducted one-third thereof towards personal expenses of the deceased and taken the remaining amount of Rs.12,000/- towards contribution to the family,

while referring to the ruling of Karntaka High Court in **V.S. Gowdar v. Oriental Insurance Company Limited and another** [2002 (3) A.J.R. (2)], applied the multiplier '14' taking age of the deceased as 28 years and arrived at Rs.1,68,000/- towards loss of dependency. The learned Chairman also granted Rs.15,000/- towards loss of estate. The tribunal below awarded Rs.15,000/- to the 1st petitioner towards loss of consortium; a sum of Rs.10,000/- each to the petitioners 2 and 4 towards love and affection; Rs.15,000/- was granted towards pain and suffering; Rs.5,000/- was granted towards medicines and treatment and a sum of Rs.2,000/- was granted towards funeral expenses, thus, in all making a total sum of Rs.2,40,000/-.

7. Challenging the aforesaid award, the present appeal is preferred by the Corporation contending that the Tribunal totally went wrong in appreciating the evidence in determining the compensation, mainly contending that the deceased died at the young age leaving small children and wife, and, therefore, the supervisory loss taken by the tribunal was without any basis as the documentary evidence would clinchingly establish the agricultural land owned and possessed by the family and even the lands were being cultivated through bore wells.

8. Now, the points that arise for consideration are:

(i) Whether the compensation amount awarded by the Tribunal is excessive and exorbitant as urged by the appellant?

(ii) Whether the amount awarded by the Tribunal is not just and inadequate and if so what would be the amount to which the Cross-objectors are entitled?

9. The accident occurred in 1992. The claim of the petitioners is that the deceased owned more than 20 acres of agricultural land besides 8 acres of Mango garden and the deceased was personally supervising his cultivation and was earning not less than Rs.1,00,000/- per annum. Even construed that the said statement suffers from exaggeration, but keeping in view, the contents of Exs.A4 to A8, certainly, supervisory loss fixed by the tribunal at Rs.18,000/- is far below. Even in 1992, when a person holding more than 23 acres of land with bore wells to cultivate the lands, certainly, the income of the deceased would be at least Rs.40,000/- per annum. In which case, one-fourth thereof if deducted towards personal living expenses of the deceased since the family members of the deceased are four in number, in view of the law declared by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], the contribution works out to Rs.30,000/- to the family. The deceased since died at the age of 28 years, even taking maximum age as 30 years, the relevant multiplier factor is '17'. The total loss of dependency, thus, would, work out to Rs.30,000/- x 17 = Rs.5,10,000/-. The petitioners are also entitled to 50% towards future prospects as declared by the Hon'ble Apex Court in **Rajesh v. Rajbir**

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[1] 2009 ACJ 1298 (SC)

Singh[2]. Besides the same, the petitioners are also entitled to Rs.50,000/- towards conventional sum in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**[3]. So far as the pain and suffering is concerned a sum of Rs.15,000/- was granted by the Tribunal, which does not arise in the present case. An amount of Rs.5,000/- awarded by the Tribunal towards medicines and treatment shall be maintained. Thus, the claimants are entitled to a sum of Rs.5,10,000/- + Rs.2,55,000/- + Rs.50,000/- + Rs.5,000/- = Rs.8,20,000/- as compensation.

10. Thus, certainly, the compensation awarded by the Tribunal is in fact on lower side as the Tribunal has not properly appreciated the evidence, both oral and documentary let in by the petitioners and, therefore, there is no merit in the present Appeal and accordingly the same is dismissed. Consequently, Cross-objections are allowed enhancing the compensation amount of Rs.2,40,000/- (Rupees Two lakhs and forty thousand only) to Rs.8,20,000/- (Rupees Eight lakhs and twenty thousand only). The claimants 1 to 4 shall share the enhanced amount in the ratio 45:25:10:20 as ordered by the Tribunal while maintaining original compensation. The rate of interest at 9% p.a. granted by the tribunal on Rs.2,40,000/- is maintained, and the enhanced amount i.e., Rs.5,80,000/- shall carry

[2] (2013) 9 SCC 54
[3] 2014 ACJ 1430

interest at the rate of 7.5% p.a. from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA,J

12th September, 2017
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