HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3019 OF 2004

JUDGMENT:

The present appeal is preferred by the petitioners in O.P. No.265 of 1999, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Khammam (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.80,000/- granted by the Tribunal by his order, dated 29.04.2002, as against the claim of Rs.2,00,000/- laid under Section 166 of the Act, was meager.

2. The appellants herein, who are parents of deceased Purushothama Chary, are petitioners in the aforesaid O.P., while respondent Nos.1 to 4 herein, who are driver, owners and Insurer of the Car bearing registration No.GUY 367, are respondent Nos.1 to 4, respectively.

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

4. Heard Sri K. Ratangapani Reddy, learned counsel for the appellants, and Sri G.S. Prakash Rao, learned standing counsel for respondent No.4. The appeal against respondent No.2 was dismissed for default on 8.2.2016. Despite service of notice on respondent Nos.1 and 3, none appears for them.

5. The submission of the learned counsel for the petitioners is that the Tribunal without applying structural formula, a *lump sum* amount was granted which is totally against the mandatory requirements, which the Tribunal ought to have adhered to, for the reason that the deceased was 18 years old at the time of accident and working as a labourer and, in fact, the fact-situation would reflect that he along with his father was returning having attended to labour work, during which time, the accident had occurred. Admittedly, respondent No.4 - Insurer has not preferred any appeal indicating that there has been no violation of terms and conditions of the policy, and probably felt that the amount of Rs.80,000/- granted by the Tribunal was justified. The submission of the learned counsel is that since the deceased was an earning member, relying on the ruling rendered by the Hon'ble Supreme Court in **Kishan Gopal and another v. Lala and others**[1], notional income of Rs.30,000/- was taken for a person between the age group of 10-15 years.

6. Admittedly, the accident had taken place in the year 1998. If at all the earnings of the deceased had to be considered, minimum wages then prevailing ought to be taken. Admittedly, a Coolie cannot be considered as a skilled labourer. Nothing has been placed to show that the daily wage of a Coolie during the period of accident would be such and such as prescribed by relevant notification. The case of the petitioners is that the deceased was earning Rs.70/- per day by doing

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[1]. (2014) 1 SCC 244

coolie work. Even if it is viewed that the said amount suffers from exaggeration, still, the wage can be taken as Rs.50-60 per day. If the daily wage is taken at Rs.60/- or Rs.1,800/- would be the monthly wage or Rs.21,600/- would be the annual income. Since the deceased died in unmarried status, 50% towards his personal living expenses is to be deducted in view of the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2] and **Munna Lal Jain v. Vipin Kumar Sharma**[3]. His contribution would work out to Rs.10,800/- per annum. Since the deceased was 18 years old, the relevant multiplier is '18' as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma**[2], and when the same is applied, it would work out to Rs.1,94,400/- [Rs.10,800/- x 18]. Since the deceased died in unmarried status, the petitioners are also entitled to a sum of Rs.5,000/- towards funeral expenses and Rs.2,000/- towards transport charges. Thus, the petitioners are totally entitled to Rs.2,01,400/-. The amount determined now exceeds the claim made by the petitioners, but in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh and others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh**[2], when the amount determined towards fair compensation if exceeds the claim made by the petitioners, the amount determined is to be awarded.

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[2]. 2009 ACJ 1298
[3]. (2015) 6 SCC 347
[4] AIR 2003 SC 674
[5] 2012 ACJ 191 (SC)

7. Concerning rate of interest, the Tribunal awarded it at 9% per annum on Rs.80,000/- the same is maintained, but on the enhanced amount of Rs.1,21,400/-, interest at 7.5% per annum is awarded in view of the decision rendered by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[6].

8. In the result, the appeal is allowed, and the order and decree, dated 29-04-2002, in O.P. No.265 of 1999, passed by the Tribunal, are modified, enhancing the compensation to Rs.2,01,400/- (Rupees two lakhs one thousand and four hundred) from Rs.80,000/- with interest at the rate of 9% per annum on the amount of Rs.80,000/- granted by the Tribunal and at the rate of 7.5% per annum on the enhanced amount of Rs.1,21,400/- (Rupees one lakh twenty one thousand and four hundred) from the date of petition till realization, and affirming the order in all other respects. The enhanced amount shall be apportioned between the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. The appellants - petitioners shall pay Court fee on the excess amount of Rs.1,400/- (Rupees one thousand and four hundred) within three months from the date of receipt of a copy of the order. There shall be no order as to costs.

[6]. 2013 ACJ 1403

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

A. SHANKAR NARAYANA, J

August 30, 2017.
Mgr