

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4600 OF 2003

JUDGMENT:

The whole effort made by Smt. S.A.V. Ratnam, learned standing counsel for the insurer viz., The Oriental Insurance Company Limited, to see that the compensation awarded by the learned Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Vijayawada, in M.V.O.P. No.642 of 1999 by the judgment and the decree dated 10.09.2003, is lowered, on the ground that the amount granted by the Tribunal was excessive and exorbitant, is based on the premise that the employer was not examined.

2. So far as fact-situation leading to the death of the deceased Majety Srinivas Rao is concerned, there is no dispute.

3. There is no representation for respondent Nos.1 and 2 - petitioners - claimants, whose counsel is Sri Ravi Kumar Tolety.

4. On the other hand, the present appeal stood dismissed for default against respondent Nos.3 and 4, who are driver and owner, respectively, of the lorry bearing No.TN-47-E-2327 that involved in the accident.

5. In fact, on the short ground that the appeal having been dismissed against respondent Nos.3 and 4, cannot be maintained

against respondent Nos.1 and 2, the present appeal ought to be dismissed.

6. Even otherwise, going into merits, the Tribunal mainly relying on Ex.A-5, which was appointment order of the deceased dated 14.12.1998 and on the basis of the evidence of PW.1 and further basing on Ex.A-12, whereunder, Saralee Bakery India Private Limited, settled the insurance claim of the deceased for an amount of Rs.3,00,000/- and sent the same to PW.1 on 31.01.2000 and the related document Ex.A-13, arrived at the opinion that the deceased was earning salary with basic pay of Rs.15,650/-. When the very insurance claim was settled under Ex.A-12, it gives two indications. The first being, Ex.A-5 cannot be doubted, and, the second, the deceased Srinivasa Rao, was working in Saralee Bakery India Private Limited, also cannot be doubted. In that view of the matter, non-examination of the employer is of no avail.

7. Now turning to the formula applied by the Tribunal in arriving at the compensation, in fact, the Tribunal has not taken any allowances, but only taken the basic salary of Rs.15,650/- as mentioned in Ex.A-5, and, taking the age of the deceased as 34 years or 35 years, applied corresponding multiplier 14.81, then in vogue, perhaps, basing on the ruling in **Bhagwan Das v. Mohd. Arif** [1987 (2) ALT 137], though, it is not specifically referred to. Thus, arrived at Rs.18,54,212/- besides granting Rs.15,000/- towards loss of estate, loss of love and affection, loss of amenities, and Rs30,000/- towards

loss of consortium, but, somehow, the Tribunal while totaling the amount, left out Rs.15,000/- granted towards loss of estate, but, only included Rs.30,000/- towards loss of consortium. Thus, there is arithmetical error, which requires, invariably, correction. Therefore, to the amount of Rs.18,84,212/-, a sum of Rs.15,000/- is added and it would amount to Rs.18,99,212/-.

8. In fact, if the ratio laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹ and the ruling in **Rajesh v. Rajbir Singh**², are applied, the petitioners are entitled to future prospects even, but, however, no amount was granted towards future prospects. When viewed in that perspective, certainly, it cannot be said that the amount granted by the Tribunal is neither exorbitant nor excessive. It has to be viewed that it is the just compensation awarded by the Tribunal. Therefore, the appeal is devoid of merit so far as determination of compensation is concerned.

9. As regards, the rate of interest, the learned counsel would submit that the Tribunal has granted the same at 9% per annum, and requests to reduce the same. But, there is no ground agitated with regard to the same.

10. Hence, the Civil Miscellaneous Appeal is dismissed confirming the order under challenge in all aspects. There shall be no order as to costs.

¹ (2009) 6 SCC 121 SC - DB

As a sequel thereto, Miscellaneous Applications, if any,
pending in the appeal stand closed.

A. SHANKAR NARAYANA, J

October 6, 2017.

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² 2013 ACJ 1403 (SC) (F)B

