HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.766 OF 2018

JUDGMENT:

Heard Sri Naresh Byrapaneni, learned standing counsel for the appellant - Respondent No.3 - Insurer, and Sri D. Kodanda Rami Reddy, learned counsel for respondent Nos.1 to 4 - claimants.

2. The learned Chairman, Motor Accident Claims Tribunal - cum - Principal District Judge, Kadapa (for short 'Tribunal'), passed the order and decree, dated 22.11.2017, in M.V.O.P. No.218 of 2016, granted a compensation of Rs.7,90,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization for the death of Konka Rama Mohan as against the claim of Rs.3,05,000/- laid under Section 166 of the Act, 1988 (for short 'Act').

3. The Tribunal arrived at Rs.7,90,000/- taking the multiplier factor '7' as the deceased was aged 65 years on the date of accident and Rs.5,000/- per month towards earnings, deducting 1/4th taking into consideration that dependants are four in number and granted the amount of Rs.3,15,000/- towards loss of dependency; Rs.15,000/- towards loss of estate; Rs.40,000/- towards loss of consortium; Rs.15,000/- towards funeral expenses; and also a sum of Rs.4,00,000/- towards loss of love and affection at the rate of Rs.1,00,000/- to each

of the petitioners, relying on a ruling in **Kaladevi & others v. Bhagawandas Chauhan and others[1].**

4. The only controversy between the parties is, that the deduction at 1/4th is not permissible according to the learned standing counsel, since petitioner No.4 is a married daughter of the deceased and petitioner No.1 and, therefore, she cannot be construed as a dependant, and the Tribunal ought to have taken 1/3rd deduction towards personal living expenses of the deceased. This particular contention raised by the learned standing counsel is not disputed by the learned counsel for the petitioners and, therefore, 1/3rd deduction is to be applied instead of 1/4th taken by the Tribunal.

5. The second submission is, that the Tribunal ought not to have granted Rs.1,00,000/- to each of the petitioners under the head of loss of love and affection, making a total amount of Rs.4,00,000/- on the ground that it is against the law laid down by a larger bench of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others[2]**. This submission is also not disputed by the learned counsel for the petitioners. In fact, the larger bench of the Hon'ble Apex Court in paragraph No.61 recorded conclusions thus:

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-

---

1. 2014 ACJ 2875 (SC)
2. 2017 (13) SCALE 12

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

6. Therefore, the petitioners are entitled to Rs.2,80,000/- (Rs.5,000/- x 12 = 60,000/- minus 1/3rd = 40,000/- x 7) towards loss of dependency. The amounts of Rs.15,000/-; Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of consortium and funeral expenses, respectively, awarded by the Tribunal are confirmed. In such an event, the total compensation to which the respondents - petitioners would become entitled is for Rs.3,50,000/-.

7. The rate of interest awarded by the Tribunal at 6% per annum is maintained, since no appeal is preferred by the respondents - petitioners.

8. Accordingly, the appeal is allowed in part, and the order and decree, dated 22.11.2017, passed by the Tribunal in M.V.O.P. No.218 of 2016 are set aside, reducing the compensation to Rs.3,50,000/- from Rs.7,90,000/- with interest at the rate of 6% per annum thereon from the date of petition till realization. The said amount shall be apportioned among the petitioners as originally apportioned by the Tribunal. No order as to costs.

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

A. SHANKAR NARAYANA, J

April 03, 2018.
Mgr