HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.3622 OF 2005

JUDGMENT:

Having dissatisfied with the award dated 18-07-2005 granting a sum of Rs.7,40,000/- towards compensation, as against the claim of Rs.12.00 lakhs claimed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), this appeal is filed by the petitioners in O.P.No.570 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, at Mahabubnagar (*for short, 'the Tribunal'*) for death of one B.Shyam Gupta (deceased) in a motor accident.

2. The appellants herein are the petitioners before the Tribunal, while the respondent Nos.1 and 2, are the owner and insurer of the Lorry bearing No.ADT 3337 (*for short 'offending vehicle)*, respectively are respondents in the O.P.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The factual background of the case is that on 14-01-2001 deceased was proceeding on his scooter on National High Way No.7 from Hyderabad side towards Shadnagar and when he reached the limits of Lingareddygudem, the offending vehicle loaded with bricks and proceeding from Nandigam to Jadcherla came in a rash and negligent manner and high speed, dashed the scooter of deceased from back side. As a result, deceased jumped from the scooter, fell down on the road and sustained grievous injuries. Immediately, deceased was shifted to Government hospital, Shadnagar and from there to Osmania General Hospital, Hyderabad where he succumbed to injuries. It is also stated that by the time of accident deceased was hale and healthy and drawing salary of Rs.7,149/- as Head constable of DCRB, Mahabubnagar. The petitioners are wife and son of deceased respectively and they are claiming compensation of Rs.12.00 lakhs.

5. The 1st respondent-owner of the lorry filed counter alleging that accident took place due to gross negligence on the part of deceased, but not his driver and hence the insurer of Scooter is responsible for payment of compensation. It is also stated that if the Tribunal awards any compensation to the petitioners, the same

has to be registered under provisions of M.V.Act and awarded against the 2nd respondent, who has insured the offending lorry under policy bearing No.611501/31/00/05781 valid from 29-11-01 and the same was in force at the time of accident.

6. The 2nd respondent-Insurance Company filed counter denying the allegations in the petition and its liability to pay compensation. It is further stated that the driver of the offending vehicle had no valid and subsisting driving licence at the time of accident. The offending vehicle was not road-worthy at the time of offence. It is denied that the 1st respondent is registered owner of the vehicle and got insurable interest. The 2nd respondent is not aware of criminal proceedings launched due to death of deceased. It is also stated that the accident occurred due to gross negligence on the part of deceased, who was not having valid driving licence to drive the scooter. As such, if petitioners are entitled for any compensation, it is the owner of scooter, but not the 2nd respondent liable to pay the compensation. The compensation claimed by the petitioners is highly excessive and arbitrary and if the Tribunal awards compensation, the contributory negligence has to be

apportioned between two vehicles. Hence, prayed to dismiss the petition.

7. The Tribunal framed the following issues for trial:

1. Whether the accident occurred on 14-01-2001 at about 7 pm on N.H.No.7, near Lingareddyguda village limits due to rash and negligent driving of lorry bearing No.ADT 3337 by its driver and whether it resulted in causing the death of deceased B.Shyam Gupta?
2. Whether the petitioners are entitled for any compensation? If so, to what amount, and from whom?
3. To what relief?

8. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PWs1 and 2 and documentary evidence Exs.A1 to A-7 granted compensation of Rs.7,40,000/-.

9. Learned counsel for the appellants submits that though Ex.A.3 certified copy of PME report shows that age of deceased as 37 years, but the Tribunal has taken the age of deceased as '45' years and applied multiplier '13' instead of applying multiplier '16'. He also submits that no amount was granted towards future prospects of deceased and only an amount of Rs.27,000/- towards loss of consortium, loss of estate and funeral expenses was granted, though the appellants/claimants are

entitled for Rs.70,000/- as per the Apex Court judgment of ***National Insurance Company Limited v. Pranay Sethi***[1]**.**

10. On the other hand, learned Standing Counsel appearing for the 2nd respondent submits that though deceased is a Government employee, the appellants have not filed either date of birth certificate or any other document to show the date of birth of deceased. Even then, the Tribunal came to conclusion that deceased was aged 45 years, which warrants no interference of this Court.

11. In this case it is to be seen that no doubt the date of birth certificate of the deceased is not produced by the appellants/claimants and the Ex.A.3 PME report reflects the age of deceased as '37' years. But it is not known as to on what basis the Tribunal has taken the age of deceased as '45' years. It is pertinent to note that the Tribunal recorded that PW.1 was suggested by the respondent that the age of deceased was '40' years. It goes to show that even according to respondent, the age of deceased was 40 years. Since no documentary proof is produced with regard to age of deceased and even according to respondent, deceased was aged 40 years, it

[1] 2017 ACJ 2700 = AIR 2017 SC 5157

is just and proper to adopt the multiplier '15' as per the judgment of ***Sarla Verma and others v. Delhi Transport Corporation and Another***[2] for the age group of 36-40 years, but the Tribunal has adopted the multiplier '13' as per Schedule to Section 163-A of the Act. As per Ex.A.6 salary certificate issued by the Administrative Officer, District Police Office, Mahabubnagar, the gross salary of deceased is Rs.7,149/- and net salary is Rs.6,849/-. After deducting 1/3rd therefrom towards personal expenses, the contribution of the deceased to his family comes to Rs.4,566/-. Further, as the deceased was working as a Head Constable and a fixed wage earner and aged 40 years, in view of the ratio laid down by the Supreme Court in **Pranay Sethi** (1 supra), the appellants are entitled for future prospects at 30%, which comes to Rs.1,370/- (Rs.4,566/- X 30%). Thus, the total earnings of the deceased comes to Rs.5,936/- (Rs.4,566/- + Rs.1,370/-). After applying the multiplier '15' in view of the judgment of the Supreme Court in Sarla Verma, the loss of dependency comes to Rs.10,68,480/- (Rs.5,936/- X 12 X 15). That apart, in view of the judgment of the Supreme Court in **Pranay Sethi**, the appellants are

[2] (2009) 6 SCC 121

entitled for Rs.70,000/- under conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, as against the amounts granted by the Tribunal of Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.2,500/- towards funeral expenses. Thus, the appellants are entitled for the total compensation of Rs.11,38,480/- (Rs.10,68,480/- + Rs.70,000/-)

12. Accordingly, the appeal is allowed granting compensation of Rs.11,38,480/- as against Rs.7,40,000/- awarded by the Tribunal. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Supreme Court in **Rajesh v. Rajbir**[3], the same rate of interest is maintained on the enhanced amount of compensation. There shall be no order as to costs. As a sequel, miscellaneous applications, if any, pending in the appeal shall stand closed.

A.RAJASHEKER REDDY, J

13-02-2019
Nvl

[3] 2013ACJ 1403=2013(4) ALT 35