THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.Nos.1534 of 2006 and 3923 of 2012

COMMON JUDGMENT:

Since these two appeals filed under Section 173 of the Motor Vehicles Act, 1988 relate to one accident and as the parties are also same, this Court deems it appropriate to dispose of these two appeals by way of common order.

Heard Sri V.Srinivasarao, learned Standing Counsel for the Insurance Company, and Sri J.Chandraiah, learned counsel for the claimants.

For the sake of convenience, the parties would be referred as they were mentioned before the Tribunal.

Claimant No.1 is the wife, claimant Nos.2 and 3 are the children and claimant Nos.4 and 5 are the parents of the deceased T.Shankar @ Shankaraiah. In a motor accident that took place on 17.04.2003, the deceased lost his life. Alleging negligence and rashness on the part of the driver of the vehicle and seeking compensation of Rs.15,00,000/-, the claimants filed M.V.O.P.No.206 of 2003 on the file of the Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad hereinafter called as Tribunal.

The owner of the offending vehicle bearing No.AP 4U 2439 remained *ex parte* and the 2nd respondent-Insurance Company contested the O.P. by filing a written statement. In order to substantiate their case, on behalf of the claimants, the wife of the deceased/claimant No.1 was examined as P.W.1 and P.W.2 was also examined on behalf of the claimants and Exs.A1 to A7 were marked. On behalf of the Insurance Company, R.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. On the basis of the material available, the Tribunal framed the following issues for consideration:-

1. Whether the deceased T.Shankar alias Shankaraiah met with fatal accident due to collision between Hero Honda Motorcycle bearing No.AP 29 5339 and the lorry bearing No.AP 4U 2439?

2. Whether the accident did not occur due to the rash and negligent driving of the lorry baring No.AP 4U 2439?

3. Whether the petitioners are entitled for compensation, if so, to what extent and from whom?

4. To what relief?

While answering issues 1 and 2, the Tribunal held that the accident took place due to the rash and negligent driving of the offending lorry and that the deceased did not contribute in any way for the accident. While dealing with issue No.3, touching the quantum of compensation, the Tribunal awarded a sum of Rs.7,92,608/- towards loss of future income, Rs.15,000/- towards loss of consortium to claimant No.1, Rs.2,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.25,000/- towards love and affection and pain and suffering. Totally, the Tribunal awarded a sum of Rs.8,49,608/- with interest at the rate of 6% per annum from the date of petition till the date of deposit and granted proportionate costs.

In M.A.C.M.A.No.1534 of 2006, the insurance company is disputing the quantum of compensation fixed by the Tribunal and in M.A.C.M.A.No.3923 of 2012, the claimants are seeking the enhancement of compensation awarded by the Tribunal.

According to the learned Standing Counsel for the Insurance Company, the amount fixed by the Tribunal towards the income is excessive and not in consonance with the material available on record. It is further submitted by the learned counsel that the multiplier adopted is also on higher side. Per contra, it is submitted by the learned counsel for the claimants/appellants in M.A.C.M.A.No.3923 of 2012 that the Tribunal ought not to have made the deduction of the amounts covered by Employees Provident Fund, Life Insurance, Employees State Insurance and other deductions while fixing the net income of the deceased. According to the learned counsel, the said amounts are only savings of the claimant which cannot be deducted from the net salary of the deceased. It is also the submission of the learned counsel that the Tribunal ought to have adopted the multiplier '18' instead of '17'. It is submitted by the learned counsel for the claimants that the Tribunal granted paltry amounts towards other heads also and the same are not in accordance with the judgment of the Hon'ble Apex Court in the case of ***National Insurance Company v. Pranay Sethi and others***[1]

In the above background, now the issue that emerges for consideration of this Court is:

> Whether the Tribunal correctly fixed the compensation amount in accordance with law or whether the same warrants any interference of this Court under Section 173 of the Motor Vehicles Act?

The Tribunal for fixing the loss of future income relied upon Ex.B2 report of the Investigator of the insurance company.

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[1] 2017(6) ALD 170 (SC)

According to the said report, the gross salary of the deceased was Rs.7,278.95ps. per month. It is evident from the impugned order that the Tribunal deducted a total sum of Rs.1,450.90 ps. i.e., Employees Provident Fund of Rs.478/-, LIC premium of Rs.554/-, union fund of Rs.4/-, professional tax of Rs.80/-, Employees State Insurance Scheme payment of Rs.120.80 ps, canteen fee of Rs.89.10 ps. and other deductions of Rs.125/-. According to the learned counsel for the claimants, the Tribunal grossly erred in deducting the amounts payable by the deceased towards Provident Fund, LIC premium, Employees State Insurance Scheme and other deductions. In elaboration, it is submitted by the learned counsel that the amounts paid towards Provident Fund, LIC premium, Employees State Insurance Scheme should have been taken as savings of the deceased and should have been included in the net salary of the deceased. This Court is completely in agreement with the said submission since they are only the savings of the deceased. It is also required to be noted that the Tribunal also deducted Rs.125/- towards other deductions without specifying the nature of the same. Therefore, this Court is inclined to include the said amount of Rs.125/- to the net salary of the deceased. If the said amounts are included in the net salary of the deceased, the net salary would come to Rs.5,828/- + Rs.1,277/- = Rs.7,105/- per month and annual salary would come to Rs.85,260/-. If 1/3rd of the amount (Rs.85,260 x 1/3 = Rs.28,420/-) is deducted towards personal expenses of the deceased, it would come to Rs.56,840/- (Rs.85,260/- - Rs.28,420/-). As per ***Sarala Verma (Smt.) and others v. Delhi Transport Corporation and another***[2]

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[2] (2009)6 SCC 121

case, since the age of the deceased was mentioned as 25 years, multiplier '18' should be adopted. If the said multiplier is adopted, it would come to Rs.10,23,120/-.

The Tribunal granted Rs.15,000/- towards the loss of consortium to claimant No.1 and also granted Rs.2,000/- towards funeral charges and Rs.15,000/- towards loss of estate and Rs.25,000/- towards loss of pain and suffering as well as love and affection. As per the decision of the Hon'ble Apex Court in ***National Insurance Company***'s case (supra 1), claimant No.1 is entitled for Rs.40,000/- towards loss of consortium and the claimants are also entitled for Rs.15,000/- towards funeral expenses. Therefore, the claimants in this case are entitled for the following amounts:

a) Compensation towards loss of future income-Rs.10,23,120/-
b) Compensation towards consortium to 1st petitioner-Rs.40,000/-.
c) Compensation towards funeral expenses-Rs.15,000/-
d) Compensation towards loss of estate-Rs.15,000/-
e) Compensation towards loss of pain and suffering and as well as love and affection-Rs.25,000/-

Totally, the claimants are entitled for Rs.11,18,120/-.

In the result, M.A.C.M.A.No.1534 of 2006 is dismissed and M.A.C.M.A.No.3923 of 2012 is allowed in part, enhancing the compensation from Rs.8,49,608/- to Rs.11,18,120/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit on the enhanced amounts with proportionate costs. Claimants shall also pay court-fee on enhanced amounts. It is made clear that the claimants/appellants are entitled to the amounts in the same proportion as indicated in the impugned decree.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

A.V. SESHA SAI, J

20th December, 2017.
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