SMT. JUSTICE T. RAJANI,

MACMA.Nos.3889 of 2008 AND 5329 OF 2008

COMMON JUDGEMENT:

MACMA No.3889 of 2008 is preferred by the appellants-APSRTC, who are respondents before the Court below. MACMA. NO.5329 of 2008 is filed by the claimants assailing the Order and decree passed in O.P. No.2509 of 2004, dated:6-2-2006 on the file of the Special Judge for Trial of Cases under E.C. Act-cum-III Additional M.S.J. cum XVII Additional Chief Judge at Hyderabad.

2. The appellants in MACMA.No.3889 of 2008 shall be referred as respondents hereafter and the appellants in MACMA.No.5329 of 2008 shall be referred as claimants. The respondents contend that the Court below did not consider negligence on the part of deceased. The deceased, according to them was crossing the road. The learned Standing Counsel contends that driver of the bus applied sudden breaks while the deceased was crossing the road and that negligence is not on the part of RTC driver. But the Court below considered the aspect of negligence elaborately. The evidence on record will show that charge sheet was filed against driver of the RTC bus. The driver did not even step into the witness box and hence, in the absence of any evidence and in the light of the

charge sheet against the RTC bus driver, liability cannot be fixed on the respondents.

3. Learned Counsel for the claimants assails the order and decree on the ground of inadequacy of the compensation. He argues that the Court below did not take into consideration the future prospects of the deceased which have to be at the rate of 40%, as per judgement of the Apex Court in **SLP. (Civil) No.25590 of 2014, dated:31-10-2017, in the case of National Insurance Company Limited Vs. Pranay Sethi and Others** wherein it was held that a person, who is working in a private sector or is self-employed is also entitled to get future prospects. Last eight lines of para No.59 of the said judgement are relevant, which read as follows:

> "Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

4. The Court below considered the evidence of PW2 and also the recital in Ex.A7-salary certificate and fixed the monthly salary as Rs.5000/- per month. There is absolutely no reason to disbelieve the evidence of PW2 with the hike of 40%, salary would be Rs.7,000/- per month. Counsel for the claimants fairly submits that the deceased, being a

bachelor the deduction should be at the rate of 50% instead of 1/3rd, as was taken by the Court below. Then the future monthly loss of income would be Rs.3,500/- per month and per annum is would be Rs.42,000/-. Counsel for the claimants further submits that the lower Court applied the Multiplier of 13 which is not proper and that the Multiplier relevant for the age of the deceased is to be taken into consideration. In view of the decisions of the Apex Court in ***Amrit Bhanu Shali and others Vs. National Insurance Company Limited and others***[1], ***Reshma Kumari and others Vs. Madan Mohan and another***[2] and ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others***[3], when the deceased is a bachelor (his age was 25 years), the multiplier applicable to the age group of the deceased alone has to be taken into consideration. The Multiplier then would be 17 and hence Rs.42,000/- x 17 = Rs.7,14,000/- is awarded towards loss of future income. Apart from this, Rs.15,000/- is awarded towards funeral expenses and Rs.15,000/- towards loss of estate is awarded by following the judgement in **National Insurance Company Limited Vs. Pranay Sethi and Others** which comes to Rs.7,44,000/-. Claim is only for Rs.7,00,000/-. But as per the ruling in the case of **Rajesh**

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[1] 2012 (11) SCC 738
[2] 2013 (9) SCC 65
[3] 2015 (6) SCC 347

v. Rajbir Singh[4], the amount exceeding the claim is awarded. Hence, the award of the lower Court is modified by enhancing compensation to Rs.7,44,000/-.

5. The claimants are entitled to in the same proportionate as per the apportionment made by the Court below. The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

6. In the result, appeal of the claimants in MACMA.No.5329 of 2008 is partly allowed with proportionate costs and MACMA.3889 of 2008 is dismissed.

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[4] 2013 ACJ 1403

7. As a sequel, Miscellaneous Petitions, if any, pending, stands closed.

JUSTICE T. RAJANI

Dt.16.11.2017
gnr

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MACMA.No.3889 of 2008 AND 5329 OF 2008

Dt:16-11-2017

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