HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 123 OF 2012

Judgment:

The appellants – claimants, dissatisfied with the granting of compensation of Rs.4,00,000/- for the death of their son namely Avinash, in OP No.66 of 1999, on 04.08.2010, by the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge (FTC), City Civil Court, Hyderabad, (for short "the Tribunal"), as against the claim of Rs.6,00,000/-, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the present appeal.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts, in brief, are that the 1st petitioner is the mother and the 2nd petitioner is the father of the deceased Avinash; on 01.07.2006 at about 5.30 PM the deceased was proceeding on a Motor Cycle bearing registration No. AP 29 L 243, as a rider, along with a pillion rider from Yadagirigutta towards Hyderabad side and when he reached the outskirts of Rayagiri village, APSRTC bus bearing registration No. AP 10 Z 6233 of Yadagirigutta Depot came in opposite direction at high speed in a rash and negligent manner and dashed the motor cycle due to which the deceased sustained injuries on his head and body; he was immediately shifted to Government Area Hospital, Bhuvangiri, where he was declared dead; Bhuvangiri Police registered a case in Crime No.112 of 2006 under Section 304-A IPC against the driver of the APSRTC bus; at the time of accident the deceased was aged about 22 years and was working as Sales Executive in BHNL Financial Services, HDFC Bank, at Hyderabad and

drawing monthly salary of Rs.6,000/-; due to sudden death of their only son at an young age, the petitioners lost dependency, hence they sought compensation from the respondents 1 and 2 - APSRTC.

4. The first respondent remained *ex parte*. The 2nd respondent filed counter denying the claim of the petitioners.

5 The Tribunal, basing on the said pleadings, framed three issues. On behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, none were examined and no documents were filed.

6. On appraisal of evidence on record, the Tribunal answered issue No.1 in favour of the petitioners holding that the deceased died in the accident that occurred due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10 Z 6233. On Issue No.2, the Tribunal, based on Ex.A6 salary certificate issued by the HDFC Bank and the evidence of PW.3, who is the Administrative Manager of HBNL Services, HDFC Bank, held that the petitioners amply proved the job and income of the deceased prior to accident. Basing on Exs.A1 to A6, Tribunal granted lump sum amount of Rs.4,00,000/- towards compensation to the petitioners for the death of the deceased and directed the respondents 1 and 2 to pay the same with interest at 9% p.a. from the date of petition till realization. Aggrieved by the same, the petitioners filed the present appeal seeking enhancement of the compensation.

7. The petitioners filed I.A.No.1 of 2018 in the present MACMA seeking to enhance the claim amount from Rs.6,00,000/- to Rs.10,00,000/-. The respondents did not file any counter opposing the

said petition. Having regard to the reasons stated in the affidavit filed in support of the petition and relying on the decision of the Hon'ble Supreme Court reported in Rajesh v. Rajbir Singh[1], wherein it was held that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation, the IA is allowed today.

8. Heard Sri C.M. Prakash, learned counsel for the appellants and learned Standing Counsel for the respondents 1 and 2.

9. Learned counsel for the appellants submits that the Tribunal erred in not awarding the amounts under future prospects, loss of estate and funeral expenses and granted a lump sum amount of Rs.4,00,000/- and in support of his contention he relied on the decisions of the Hon'ble Supreme Court reported in in Munnalal Jain v. Vipin Kumar Sharma[2] and National Insurance Co.Ltd., v. Pranay Sethi[3].

10. A perusal of the impugned award shows that the Tribunal, having held that the deceased was aged about 22 years as on the date of accident as per Exs.A1 to A6, and accepting the evidence of PW.3 and Ex.A6 - salary certificate, wherein the salary of the deceased was shown as Rs.6,000/- per month, granted a lump sum amount of Rs.4,00,000/- as compensation and the award does not disclose any particulars as to how and under what heads that amount was awarded. Though the petitioners originally claimed compensation of Rs.6,00,000/-, now they are claiming compensation of Rs.10,00,000/-. The deceased died at the very young

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[1] 2013 ACJ 1403
[2] (2015) 6 SCC 347
[3] 2017 ACJ 2700

age of 22 years while working as Sales Executive in a private Bank. The contention of the appellants is that the Tribunal has not awarded any amount towards future prospects, loss of estate and funeral expenses. The evidence of PW.3 is to the effect that the deceased was working as Sales Executive in their Bank from 2005 onwards and he used to get salary of Rs.6,000/- per month and they would increase the salary by Rs.1000/- for every six months. The respondents did not seriously dispute the avocation and income of the deceased under Ex.A6 certificate. Hence, the income of the deceased can safely be taken at Rs.5,000/- per month i.e., Rs.60,000/- per annum. Learned counsel for the appellants contends that as per Munnalal Jain's case (supra) and Pranay Sethi's case (supra), 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. Taking the same into consideration, if 40% is added as future prospects of the deceased it would come to Rs.84,000/- (60,000/- + 24,000/-) and after deducting 1/3rd towards personal expenses, it would come to Rs.56,000/-, and as per the decision of Sarla Verma v. Delhi Transport Corporation[4], the age of his mother, who is aged 38 years, can be taken for applying the multiplier and, accordingly, the appropriate multiplier to be applied is '15'. If the same is applied, the compensation amount for the death of the deceased comes to Rs.8,40,000/- (Rs.56,000 x 15). In addition to that, as per the decision of Pranay Sethi's case (supra), an amount of Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses.

[4] (2009) 6 SCC 121

11. In Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram (Civil Appeal No.9581 of 2018 (arising out of SLP (Civil) No.3192 of 2018), dated 18.09.2018), the Hon'ble Supreme Court held as follows:

> "8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.
>
> In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.
>
> The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh v. Rajbir Singh (2013) 9 SCC 54).
>
> Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation (BLACK'S DICTIONARY (5th ed. 1979).
>
> Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".
>
> Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.
>
> Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.
>
> The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to

> be awarded loss of consortium under the head of Filial Consortium.
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> Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.
>
> A few High Courts have awarded compensation on this count (Rajasthan High Court in Jagmala Ram @ Jagmal Singh v. Sohi Ram (2017 (4) RLW 3368 (Raj). However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.
>
> The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "Loss of Consortium' as laid down in Pranay Sethi (supra).
>
> In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium."

Following the said judgment, an amount of Rs.40,000/- each to the petitioners 1 and 2 is awarded towards loss of Filial Consortium. Thus, in all, total compensation of Rs.9,50,000/- is awarded.

12. Accordingly, the compensation amount awarded by the Tribunal is enhanced from Rs.4,00,000/- to Rs.9,50,000/- with interest at 9% p.a., from the date of petition till realization. The appellants are directed to pay the deficit court fee before drafting the decree.

12. Accordingly, the MACMA is allowed in part, as indicated above. There shall be no order as to costs.

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

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KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
Nsr

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 123 OF 2012

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