**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

MACMA No.234 of 2006

**JUDGMENT:**

The claimants are the appellants herein. OP number 584 of 2003 was filed by the claimants 1 to 4, 1st claimant, grand mother of claimants 2 to 4 and mother-in-law of the deceased died during the pendency of the OP, as such, the minor claimants 2 to 4 are being represented by their uncle-5th claimant. Claim is laid for an amount of Rs.3,50,000/- on account of death of Ramanamma in a motor accident involving the offending lorry bearing registration no.N.I.01A/5843. By the impugned order, the Principal Motor Accidents Claims Tribunal, Nellore, awarded a sum of Rs.1,60,000/- as against the claim of Rs.3,50,000/-. Hence, the appeal by the claimants.

2. Facts stated are:-on the fateful day *i.e.* on 27-05-2003, at about 2-10 a.m., Ramanamma (since deceased), while she was sleeping in a roadside hotel at Ananthavaram village, which she used to run, the offending lorry in question driven in a rash and negligent manner, by its driver, dashed

against the hotel, as a result and impact of the accident, the deceased who was sleeping in the roadside hotel died instantaneously. As on the date of the accident, the deceased was aged 28 years and she was earning Rs.100/- per day by running the hotel and the 1st claimant, mother-in-law and claimants 2 to 4, children of the deceased were dependent on the earnings of the deceased.

3. As regards the culpability in causing the accident, the Tribunal considering the oral evidence of PWs.1 and 2 and Ex.A-1 contents of the FIR, in the absence of any rebuttal evidence adduced on behalf of the respondents, held that the accident occurred resulting in the death of the deceased, due to the rash and negligent driving of the driver of the offending lorry, and in view of the acceptable evidence, the finding recorded by the Tribunal on this issue needs no interference.

4. Coming to the adequacy or otherwise of the compensation granted by Tribunal, learned counsel for the appellants-claimants urged that the Tribunal erred in fixing

income of the deceased at Rs.1,000/- per month though evidence was led in to the effect that the deceased was earning Rs.3,000/- per month, and in the light of ratio laid down in ***SARLA VERMA vs. DTC***[1] and approved by the Constitution Bench of the Supreme Court in ***NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI***[2] inasmuch as there are four claimants, the Tribunal ought to have deducted 1/4th from out of the income of the deceased, but instead deducted 1/3rd. Learned counsel also relied on the decision in ***LATA WADHWA vs. STATE OF BIHAR***[3] and contended that the income of the deceased ought to have been taken at Rs.3,000/- per month. Though served, none appears for the 2nd respondent-insurance company.

5. In ***PRANAY SETHI's*** case (2 supra), the Constitution Bench of the Supreme Court observed that in fixing the just compensation, the Court has to go by the expression "income" and has not drawn a distinction between the

[1] (2009) 6 SCC 121
[2] 2017 ACJ 2700
[3] (2001) 8 SCC 197

income earned in the form of “salary” or one earned by any other mode which include profits from business, fee or remuneration, professional services etc. In this case, it is not denied that the deceased was running a hotel. To maintain and feed a family of four persons dependant on her, she would have toiled to earn at-least Rs.100/- per day. Given the inflation rate in the year 2003, in which year the accident occurred, earning Rs.100/- per day by running a hotel would not be on high side.

6. In cases of this nature, where the victims are self employed and do petty business, no proof can be expected muchless insisted. The deceased was doing a small business by running a roadside hotel. It is difficult for the claimants of the deceased or the injured themselves who employ themselves in un-organized sectors *viz.,* small vendors, fruit/vegetable vendors, road side petty business persons, auto drivers, rickshaw pullers, collies and labourers etc. to bring on record the proof of earnings. They generally would not have access to a bank either to invest or withdraw the

savings and arrange proof thereof. In most of the cases, and given the vagaries of life, earnings which he/she brings home would not be sufficient to meet two square meal for the members of the family. The Supreme Court decision in ***LATA WADHWA's*** case (3 supra) held that in view of the multifarious services rendered by the housewives an amount of Rs.3,000/- per month would of taken as income, even on a modest estimation, in the age group of 34 to 59. In this case the deceased was aged 28 years, as on the date of the accident and in the absence of contrary evidence that the deceased had no capacity to earn Rs.100/- per day by running a hotel and even considering her as housewife, the income of the deceased can be safely taken at Rs.100/- per day, and if the same is taken as her daily income, monthly it works out to Rs.3,000/- and annually Rs.36,000/-. The Supreme Court in ***PRANAY SETHI's*** case (2 supra), a Five Judge Constitution Bench laid down guidelines on fixation of future prospects for deciding compensation in motor accidents claims. The Constitution Bench after analyzing all the previous precedents on award of just compensation under the Motor Vehicle Act including the decisions in ***SARLA VERMA vs. DTC*** (1 supra), ***RESHMA KUMARI vs. MADAN MOHAN***[4] & ***RAJESH vs. RAJBIR SINGH***[5]**,** and recorded conclusions, which reads as under:-

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

*(i)…………*

*(ii)…………*

*(iii) While determining the income, an addition of 50 per cent 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 per cent, 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 per cent. 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 per cent of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 per cent where the deceased was between the age of 40 to 50 years and 10 per cent 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 multiplier, the deduction for personal and living expenses, the Tribunals and the Courts shall be guided by*

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[4] 2013 ACJ 1253 (SC)
[5] 2013 ACJ 1403 (SC)

*paragraphs 14 and 15 of **Sarla Verma,** 2009 ACJ 1298 (SC), which we have reproduced hereinbefore.*

*(vi) The selection of multiplier shall be as indicated in the Table in **Sarla Verma**, 2009 ACJ 1298 (SC), read with paragraph 21 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 per cent in every three years."*

7. From this it is clear that where in cases the deceased was self employed, or on a fixed salary, an addition of 40% of the established income should be added where the deceased belonged to the age of group of 40 years. If 40% of established income is to be added towards future prospects, 40% of Rs.36,000/- comes to Rs.14,400/- (Rs.36,000 + Rs.14,400 = Rs.50,400/-), the annual net contribution plus 40% future prospects comes to Rs.50,400/-. There is no tax component as the annul income of the deceased, plus the amounts towards 40% future prospects is coming only to Rs.50,400/- per annum. By the applying the ratio laid

down in ***SARLA VERMA's*** case (1 supra), deduction is to be made having regard to the number of claimants dependant on the deceased. Since there are four claimants in this case, 1/4th is to be deducted towards her personal expenses had she been alive, and the net annually contribution of the deceased to her family comes to (Rs.50,400 – 1/4th = Rs.37,800/-), Rs.37,800/- and considering the age of the deceased as on date of the accident at 28 years, the appropriate multiplier by following the table set out in ***SARLA VERMA's*** case (1 supra) is '17' (Rs.37,800 x 17), thus the loss of dependency on account of death of deceased comes to Rs.6,42,600/-. In addition to this amount, the claimants are also entitled to a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards non-pecuniary damages as awarded by the Tribunal, totaling to Rs.6,72,600/- rounded off to Rs.6,73,000/- and the claimants are entitled to receive the amounts now awarded less the amounts what they have already received. The claimants made a claim only for a sum of Rs.3,50,000/-.

The Supreme Court in ***NAGAPPA vs. GURDAYAL SINGH***[6] ruled that award of compensation in excess of amount claimed in the claim petition is permissible, as there is no stipulation in the Motor Vehicle Act to restrict award of compensation limited to the claim made by the claimants. It was also observed that technicalities of law should not be permitted to stand in the way and a fair compensation should be paid in respect of deaths. The claimants therein were awarded more than claim made by them, as it was found they were entitled for more compensation than claimed. Applying the ratio laid down in ***NAGAPPA's*** case (6 supra), the appellants-claimants are awarded compensation of Rs.6,73,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization of the amounts. The claimants are required to pay the Court fee on the enhanced amounts as they have paid the Court fee on Rs.3,50,000/-, before the deposit of amounts now awarded by R-2, insurance company. The apportionment of

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[6] 2002 AIR SCW 5348

compensation amount including the enhanced compensation shall be as per the apportionment made by the Tribunal and the same shall remain unaltered.

8. In the result, the appeal is allowed enhancing the compensation to Rs.6,73,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization of the amounts. The impugned award of the Tribunal in OP No.584 of 2003 is modified to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

***A.RAJASHEKER REDDY, J***

Dated: 22-02-2018.
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**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**M.A.C.M.A. No.234 OF 2006**

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**Date: 22-02-2018**

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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते