THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2541 of 2009
AND
M.A.C.M.A. No. 2943 of 2013

COMMON JUDGMENT:

MACMA No. 2541 of 2009 is filed by the insurance company; and MACMA No.2943 of 2013 is filed by the claimants aggrieved by the order dated 07.06.2008 in O.P.No.1093 of 2006 on the file of II Additional Chief Judge, City Civil Court, at Hyderabad. Since these two appeals are cross-appeals arising out of the same accident in O.P.No.1093 of 2006, they are taken up together for disposal by this common judgment.

2. Brief facts of the case are that on 20.03.2006, while Md.Abdul Hakeem @ Qaiser was proceeding to Raithibowli as pillion rider on the motorcycle bearing No.AP 9 AN 6280, driven by his friend Mohsin Khan, at about 4:20 PM, one lorry tanker bearing No.KL-14B-777, driven by its driver in a rash and negligent manner, dashed the motorcycle from rear side, resulting in the instantaneous death of both Md. Abdul Hakeem and his friend Mohsin Khan.

Claiming that the deceased Md.Abdul Hakeem was 43 years old by the date of accident and that he was earning Rs.15,000/- per month by working as Manager in Falcon Tours and Travels, Hyderabad; and alleging that the accident caused due to the rash and negligent driving of the driver of offending lorry, the legal representatives of Md.Abdul Hakeem filed claim petition O.P.No.1093 of 2006, claiming a compensation of Rs.10,00,000/- with 24% interest per annum, against respondents 1 and 2, the owner and insurer of the offending lorry.

The 1st respondent-owner of the lorry remained ex parte. The 2nd respondent filed counter affidavit denying the averments made in the claim petition.

The Tribunal, on consideration of the evidence of witnesses PWs.1 to 3 and the documents Exs.A1 to A6, and Ex.B1-copy of insurance policy, has partly allowed the claim petition granting compensation of Rs.7,76,000/- against respondents 1 and 2 jointly and severally, with interest at 7.5% per annum from the date of petition till realization.

Challenging the award of Rs.7,76,000/- as highly exorbitant and arbitrary, the respondent No.2-insurance company filed MACMA No.2541 of 2009. On the contrary, aggrieved by the quantum of compensation of Rs.7,76,000/- as inadequate, the claimants filed MACMA No.2943 of 2013 seeking enhancement of compensation.

3. The point for consideration in this matter is whether the compensation awarded by the Tribunal is excessive as alleged by the appellant-insurance company in MACMA No.2541 of 2009; and whether the claimants-appellants in MACMA No.2943 of 2013 are entitled for enhancement of compensation.

4. Heard the arguments of learned counsel for the insurance company, and the learned counsel for the claimants.

5. The legal heirs of both the deceased have filed two motor accident claim petitions and one of them is O.P.No.1133 of 2006 which has already been disposed of by the Tribunal. Now the order of the Tribunal in O.P.No.1093 of 2006 is only under challenge in this appeal.

6. Learned counsel for the appellants-claimants is that the deceased Md.Abdul Hakeem was working as Manager in Falcon Tours and Travels and used to earn Rs.15,000/- per month excluding his expenses and he was also earning some income in real estate business and contributing the same to the family. The deceased was an income-tax assessee. The Tribunal has taken the notional income of the deceased as Rs.8,000/- whereas he was earning Rs.15,000/- per month by working as Manager in Falcon Tours and Travels. It is also argued that the Tribunal has not awarded any amount towards future prospects of the deceased.

7. As far as the contention of the appellants with regard to the income is concerned, the Tribunal has considered the evidence of PW.3 and came to the conclusion that the deceased was earning Rs.8,000/- per month. The Tribunal relied on the testimony of PW.3 who was working in Falcon Tours and Travels who had stated that the deceased was getting salary of Rs.8,000/- per month and not Rs.15,000/- per month. The Tribunal has also given a clear reason for not considering Ex.A6 Salary Certificate issued by the Proprietor of the office as he was not examined as a witness to prove the salary certificate. Even according to Ex.A6 salary certificate, the deceased was working as Manager and getting salary of Rs.8,000/- excluding other expenditure. Therefore, the Tribunal, on consideration of the evidence and the size of the family has taken the income of the deceased as Rs.8,000/- per month. The assessment of income by the Tribunal basing on the evidence of PW.3 and Ex.A6 salary certificate does not require any interference as it is not suffering from any infirmity and therefore the income assessed by the Tribunal at Rs.8,000/- per month for calculation of loss of dependency does not require any interference. However, in the light of the judgment in **Nagappa v.**

Gurudayal Singh[1], just compensation has to be awarded by the Tribunal. The Tribunal ought to have awarded future prospects considering the nature of the employment. Since the Tribunal has taken the income of the deceased as Rs.8,000/- per month, his future prospects keeping in view his age as per **National Insurance Company Limited v. Pranay Sethi**[2], 25% of income over and above the salary of the deceased has to be added towards his future prospects. Therefore, the notional monthly income of the deceased comes to Rs.8,000 + 25% of Rs.8,000, which comes to Rs.10,000/- per month. The Tribunal has reduced 1/3rd towards personal expenses of the deceased though the family of the deceased is consisting of six members. In the light of the judgment in **Sarla Verma v. Delhi Transport Corporation**[3], 1/4th of the income has to be deducted. No doubt, the judgment in **Sarla Verma** was not available by the date of fixing compensation by the Tribunal, but in view of the fact that the appeal is arising out of the order passed in 2008, the judgment in **Sarla Verma** can be made applicable to the facts of the present case.

8. Therefore, taking the notional income of the deceased as Rs.10,000/- per month, his annual income comes to Rs.1,20,000/-. Deducting 1/4th towards personal expenses and his contribution to the family comes to Rs.90,000/- per annum. The Tribunal has assessed the age of the deceased as 43 years as no proof of age could be produced by the legal heirs of the deceased. On considering the age of the father of the deceased, the 6th petitioner, who was 65 years old, the age of the deceased was fixed at 43 years. However, the Tribunal has placed reliance on the decision in **Bhagwandas v. Mohd. Arif**[4] and fixed the

[1] (2003) 2 SCC 274
[2] (2017) ACJ 2700
[3] (2009) 6 SCC 121
[4] 1987 ACJ 1052

multiplier as 11.43 which is not applicable as on today in the light of the judgment in **Sarla Verma,** basing on which the multiplier that can be applied is ‘14’. Therefore, by applying the multiplier ‘14’ to the annual income Rs.90,000/-, the loss of dependency comes to Rs.90000 x 14 = Rs.12,60,000/-.

9. The Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.5,000/- towards pain and suffering, Rs.15,000/- towards loss of consortium, and Rs.15,000/- towards loss of estate, which comes to a total of Rs.40,000/-. In fact, the Hon’ ble Supreme Court in **Pranay Sethi** has considered to award Rs.70,000/- lumpsum towards conventional expenses. Accordingly, in view of the judgment in **Pranay Sethi,** the amount of Rs.40,000/- awarded by the Tribunal is enhanced to Rs.70,000/-.

10. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by Tribunal	Compensation enhanced
1.	Loss of dependency	Rs.7,36,000	Rs.12,60,000
2.	Conventional expenses (Funeral expenses, Pain & suffering, loss of consortium, loss of estate)	Rs.40,000	Rs.70,000
	Total	**Rs.7,76,000**	**Rs.13,30,000**

11. **IN THE RESULT**, MACMA No.2943 of 2013 is allowed by enhancing the compensation awarded by the Tribunal from Rs.7,76,000/- to Rs.13,30,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The appellants-claimants are directed to pay Court fee on the compensation awarded over and above the compensation claimed in the original petition O.P.No.1193 of 2006. The respondent-Insurance company is directed to deposit the

compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellants-claimants are permitted to withdraw the compensation amount as per the apportionment made and directions given by the Tribunal.

12. In view of the allowing the appeal MACMA No.2943 of 2013 filed by the claimants, the appeal MACMA No.2541 of 2009 filed by the insurance company stands dismissed. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

02.11.2018

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