THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1222 OF 2007 & 1069 OF 2012

COMMON JUDGMENT:

Since the facts, the issues, the parties and the award under challenge in these two appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. Challenging the order, dated 02.12.2006, passed in O.P.No.433 of 2005 by the learned Chairman, Motor Vehicles Accident Claims Tribunal – cum – III Additional Chief Judge, City Civil Court, Hyderabad (for short, "the Tribunal"), the New India Assurance Company Limited preferred M.A.C.M.A.No.1222 of 2007 seeking to set aside the award and the claimants in the said O.P. preferred M.A.C.M.A.No.1069 of 2012 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. The parties are hereinafter referred to, as per their array before the Tribunal.

4. Learned counsel for claimants would contend that the deceased K.Srinivas was aged 20 years at the time of death and working as a Salesman in Sudheer Saree Centre, Secunderabad and earning an amount of Rs.3,250/- per month and Rs.6,000/- per annum as bonus and to substantiate the same, Ex.A-8 - Salary Certificate of the deceased K.Srinivas was filed and P.W.3 – employer of the deceased K.Srinivas was examined but, the Tribunal did not consider the same and took the monthly income of the deceased K.Srinivas as Rs.2,500/-, deducted 1/3rd thereof

towards his personal expenses and applied multiplier "15" and granted Rs.3,00,000/- towards loss of dependency, Rs.2,000/- towards funeral expenses and Rs.10,000/- towards shock and mental agony, which is meagre, and ultimately, prayed to enhance the compensation to Rs.5,00,000/- as claimed.

5. On the other hand, learned Standing Counsel appearing for the New India Assurance Company would contend that the Tribunal had awarded compensation of Rs.3,12,000/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, as against an amount of Rs.5,00,000/-, and the same is excessive; that the Tribunal took the excess monthly salary of the deceased K.Srinivas and applied the multiplier, which is erroneous, and granted excess compensation towards loss of dependency and other heads and ultimately, prayed to reduce the compensation.

6. In view of the submissions made by the learned counsel for both sides, the short question that arises for determination is:

> ***"Whether the compensation of Rs.3,12,000/- with costs and interest at the rate of 7.5% per annum awarded by the Tribunal is excessive or whether the claimants are entitled for enhancement of compensation?"***

7. **POINT**:-

There is no dispute with regard to the deceased K.Srinivas succumbing to injuries in a road accident that occurred on 04.01.2005 due to the rash and negligent driving of the driver of lorry bearing No.HR SS 1485. There is ample oral and documentary evidence to substantiate the same. The Tribunal rightly recorded that the subject accident and death occurred due to the rash and negligent driving of the driver of lorry bearing No.HR SS 1485.

8. To substantiate the claim of Rs.5,00,000/-, the claimants, who are the parents and unmarried sister of the deceased K.Srinivas, examined P.Ws.1 to 3 and got marked Exs.A-1 to A-8. P.W.1 is the mother of the deceased K.Srinivas. She deposed that the deceased K.Srinivas was working as a Salesman in Sudheer Saree Centre, Secunderabad and earning Rs.3,250/- as monthly salary and Rs.6,000/- towards annual bonus and he used to spend the said amount towards the claimants, who are his parents and sister. P.W.3, who is the employer of the deceased K.Srinivas, deposed that the deceased K.Srinivas was working as a Salesman in Sudheer Saree Centre, Secunderabad and earning Rs.3,250/- as salary and Rs.6,000/- as annual bonus. In Ex.A-6 – Original Transfer Certificate of the deceased K.Srinivas, it is mentioned that the deceased K.Srinivas passed X Class. Ex.A-7 - Bonafide and Conduct Certificate of the deceased K.Srinivas shows the study of the deceased from VI to X class. Ex.A-8 - Salary Certificate corroborates the evidence of P.Ws.1 and 3 wherein the monthly salary of the deceased K.Srinivas was mentioned as Rs.3,250/-. The deceased K.Srinivas passed S.S.C. and was aged 20 years at the time of death. It cannot be disbelieved that he was not an earning member. There is specific evidence of P.W.3 with regard to the nature of the earnings of the deceased K.Srinivas. Generally, boys of 20 years age, after passing S.S.C. Examination, will take up some job to help the family. In that view, it cannot be held that the deceased K.Srinivas was not a salesman and not earning any amount. There is every possibility of getting Rs.3,250/- per month

being a salesman. Considering the evidence of P.W.3, it can be safely concluded that Ex.A-8 – Salary Certificate is genuine. Some hike in his salary is also required to be taken into consideration while calculating the compensation payable to the dependants of the deceased K.Srinivas. Considering the totality of the circumstances including the hike, the monthly income of the deceased K.Srinivas is taken as Rs.3,500/- and Rs.42,000/- per annum.

9. It is appropriate to refer to a decision reported in **Munnalal Jain and another v. Vipin Kumar Sharma and others**[1]. In view of the said decision, in case of death of a bachelor, the age of the deceased is required to be taken into consideration to apply the suitable multiplier. As per **Sarla Verma v. Delhi Transport Corporation**[2]'s case, the suitable multiplier for the age of 20 years is "18". As the deceased K.Srinivas is a bachelor, half of his income i.e., Rs.21,000/- has to be deducted towards his personal expenses. Then, the loss of dependency payable to the claimants comes to Rs.21,000/- x 18 = Rs.3,78,000/-. Further, the claimants are entitled for a sum of Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of estate and in all, the claimants are entitled for a sum of Rs.4,08,000/- (i.e., Rs.3,78,000/- + Rs.15,000/- + Rs.15,000/-). (Rupees four lakhs eight thousand only).

10. In the result, M.A.C.M.A.No.1222 of 2007 filed by the Insurance Company is dismissed and M.A.C.M.A.No.1069 of 2012 filed by the claimants is allowed in part modifying the order, dated

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[1] 2015 ACJ 1985
[2] AIR 2009 SC 3104

02.12.2006, passed in O.P.No.433 of 2005 by the Tribunal, enhancing the compensation from Rs.3,12,000/- to Rs.4,08,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. On deposit of the enhanced compensation, the claimants are permitted to withdraw the entire amount along with the interest accrued thereon equally. The other terms of the order under challenge remain unaltered. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 12.09.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

<u>M.A.C.M.A.Nos.1222 OF 2007 & 1069 OF 2012</u>

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