THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.3107 OF 2012 & 45 OF 2013

COMMON JUDGMENT:

Since both the appeals arise out of an order passed in M.V.O.P.No.59 of 2010, dated 31-07-2012, on the file of the Additional Motor Accidents Claims Tribunal-cum-XVIII Additional Chief Judge-cum-IV Additional M.S.J., Hyderabad, (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.3107 OF 2012:

2. This appeal is filed by the appellants/claimants on the ground that the Tribunal awarded meager compensation of Rs.4,36,500/-against the claim of Rs.5,00,000/- for the death of Mohd.Yousuf Khan.

M.A.C.M.A.No.45 OF 2013:

3. This appeal is filed by the appellant/insurance company, on the ground that the compensation awarded by the Tribunal is excessive.

4. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.3107 of 2012.

5. The brief facts of the case are that appellant No.1 is the mother and appellant No.2 is the sister of the deceased, Mohd.Yousuf Khan. On 21.11.2009 at 10.10 am., while the deceased driving his motorcycle on the left side of the road, and when he reached Hanuman Gas Agency near Chandrayangutta, a lorry bearing No.MHA29 6618 came in a rash and negligent

manner and dashed the motorcycle from its backside, as a result of which, the deceased fell down and died on the spot. The claimants filed the aforesaid MVOP against respondent Nos.1 and 2, owner and insurer of the aforesaid lorry, respectively, claiming compensation of Rs.5,00,000/- for the death of the deceased.

6. Sri Kasireddy Jagathpal Reddy, learned counsel for the appellants, submitted that though the appellants filed Ex.A-6, salary certificate, to show that the deceased was earning Rs.5,000/- per month, the Tribunal wrongly came to the conclusion that the deceased was a student at the time of accident basing on the contents of the charge sheet. He further submitted that the age of the deceased is 20 and the appropriate multiplier for calculation of compensation is '18' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation[1],** but the Tribunal wrongly adopted the multiplier '13' by taking into consideration the age of appellant No.1 (mother of the deceased). He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.30,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi[2].** He further submitted that appellant No.1, being the mother of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram[3]**.

[1] 2009(6) SCC 121
[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904

7. Sri V.Krishna Rao, learned Standing Counsel for respondent No.2-insurance company, submitted that as the mother of the deceased i.e., appellant No.1 herein, was aged about 50 years at the time of accident, the Tribunal ought to have adopted multiplier '11' instead of '13'. He further submitted that the Tribunal wrongly awarded the amount of Rs.10,000/- towards damage to the motor bike.

8. In Exs.A.1 and A.2, FIR and Charge Sheet respectively, as it was indicated that the appellant is a student, the Tribunal came to the conclusion that the deceased was a student at the time of accident and accordingly granted compensation. A perusal of the record, it is clear that P.W.1 (appellant No.1), in her letter-Ex.A.7 addressed to the Station House Officer, Chandrayanagutta Police Station, stated that the deceased is not a student and he is working as Sales Representative and was earning Rs.5,000/- per month. To prove the same, the appellants examined P.W.3, who stated that he runs a cloth shop and the deceased was working as a Salesman on a monthly salary of Rs.5,000/-. He also admitted that he issued Ex.A.6-salarly certificate showing the salary of the deceased as Rs.5,000/-. Therefore, this Court is inclined to take the monthly income of the deceased at Rs.5,000/- per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-), and after deduction of 50% towards personal expenditure as the deceased is a bachelor, the annual income comes to Rs.42,000/- (Rs.3,500/- X 12). The Tribunal wrongly

adopted multiplier '13' by taking the age of the mother of the deceased into consideration in calculating the compensation, instead of taking the age of the deceased. As the deceased was aged 20 years, the appropriate multiplier is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.7,56,000/- (Rs.42,000/- X 18). Apart from the same, the appellants are entitled to Rs.30,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). Appellant No.1, being the mother of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium, as per **Nanu Ram Alias Chuhru Ram**'s case (supra). Therefore, the total compensation comes to Rs.8,26,000/- (Rs.7,56,000/- + Rs.30,000/- + Rs.40,000/-).

9. In the result, M.A.C.M.A.No.3107 of 2012 is allowed and M.A.C.M.A.No.45 of 2013 is dismissed by enhancing the compensation amount awarded by the Tribunal from Rs.4,36,500/- to Rs.8,26,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 17.06.2019
TJMR