HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2965 of 2005

JUDGMENT:

This appeal is preferred by the appellants/claimants in O.P.No.762 of 2004, on the file of the Motor Vehicle Accidents Claims Tribunal (I Additional District Judge), Karimnagar, (for short, 'the Tribunal'), against the award and decree, dated 18.07.2005, for enhancement of compensation, whereunder and whereby the Tribunal granted a sum of Rs.1,30,000/- towards compensation as against Rs.2,50,000/- claimed under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellants are the claimants 1 & 2 respectively, while the respondent No.1 is the owner of the vehicle i.e., Hero Honda bearing No.AP 15L 5624 that involved in the accident, and respondent No.2 is the insurer of the offending vehicle, in the O.P. before the Tribunal. Appellants 1 and 2 are parents of the deceased, who died in the accident.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal and the son of the claimants, who died in the accident, as deceased.

4. The facts, in brief, are that on 19.05.2004, the deceased started from Kannala to go to Kataram to see his parents. He started on the motor cycle and when he reached the outskirts of Battupally Village near 146 KM mile stone, at about 3.30 p.m., another motor cycle came from opposite direction and dashed against the motor cycle of the deceased in a rash and negligent

mannr as a result of which, the deceased fell down and sustained a head injury. He was immediately shifted to Manthani, but while undergoing treatment, he succumbed to the injuries and at that time, the deceased was aged 20 years and was working as Manager in Sri Sai Stone Crushers at Kannala and earning Rs.3,000/- per month and contributing the same to the petitioners. Due to his sudden death, the petitioners sustained loss of income and hence, claimed compensation of Rs.2,50,000/-.

5. The 1st respondent remained *ex parte.*

6. The 2nd respondent, insurer of the motor cycle, filed counter contending that there is no negligence on the part of the driver of the motor cycle and that the vehicle was not validly insured with its company and the validity of the driving licence of the 1st respondent was also denied and hence, the 1st respondent is not liable to pay any compensation to the claimants as claimed by them.

7. The Tribunal framed the following issues:

> *"1. Whether the accident had occurred due to rash and negligent Driving of the vehicle bearing No.AP.15-1-5624 by the 1st respondent.*
>
> *2. Whether the petitioner is entitled to recover compensation and if so to what amount and from whom.*
>
> *3. To what relief."*

8. During enquiry, on behalf of the claimants, 2nd claimant was examined as P.W.1 and marked Exs.A-1 to A-7. On behalf of respondents, no oral or documentary evidence was adduced.

9. The Tribunal, basing on the evidence of PW1 and Exs.A-1-Certified copy of FIR and A-2-Certified copy of charge sheet, held

that due to rash and negligent driving of the driver of the vehicle, the accident had occurred and held it in favour of the petitioners.

10. Though P.W.1 has testified that her son was earning Rs.3,000/- per month as Manager in Sri Sai Stone Crushers at Kannala, but she did not adduce any supporting evidence and she only filed Ex.A-7, which is the certificate issued by Sri Sai Stone Crushers, but the contents of Ex.A-7 were not proved by examining the person, who issued the same. But as the deceased was hale and healthy by the date of the accident, the Tribunal has taken the salary of the deceased at Rs.2,000/- per month and 1/3rd of the income of the deceased was taken as loss of future dependency to the petitioners and Rs.667/- was the loss of monthly dependency and Rs.8,004/- was granted as the loss of annual dependency to the petitioners. The Tribunal fixed the multiplier as '15' and worked out loss of future dependency at Rs.1,20,060/- (Rs.8,004/- x 15). The Tribunal has also awarded an amount of Rs.5,000/- each towards loss of love and affection. In all, the Tribunal awarded compensation of Rs.1,30,060/- to the petitioners, which was rounded upto Rs.1,30,000/-, and fixed liability equally on both the respondents.

11. Dissatisfied with the award of compensation granted by the Tribunal, the appellants, who are the parents of the deceased, preferred the instant appeal impugning the award seeking for enhancement of compensation with interest thereon and costs.

12. Heard Sri Cheerla Malla Reddy, learned counsel for the petitioners and Sri K.S.N.Murthy, learned Standing Counsel for the 2nd respondent.

13. Now, the short point that arises for consideration is, whether the appellants are entitled to enhancement of compensation?

14. Learned counsel for the appellants submits that though the appellants claim that the deceased was earning Rs.3,000/- per month, the Tribunal has taken income of the deceased as Rs.2,000/- per month. The Tribunal has taken the multiplier of '15' basing on the age of the claimants, but the Tribunal ought to have taken the multiplier of '18' basing on the age of the deceased, who was 20 years at the time of the accident.

15. Learned counsel for the petitioners also submits that the Tribunal has not taken into account the future prospects of the deceased while determining the loss of dependency and the Tribunal has awarded a meagre amount of Rs.5,000/- each to the petitioners towards loss of love and affection and no amount is awarded towards filial consortium, loss of estate and funeral expenses, etc. As such, the claim is required to be enhanced.

16. Learned counsel for the petitioners also relied on a decision reported in **Magma General Insurance Co. Ltd. v. Nanu Ram and others[1],** wherein the Apex Court has held as follows:

> "A Constitution Bench of this court in *Pranay Sethi,* 2017 ACJ 2700 (SC), dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium.
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> In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'.

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[1] 2018 ACJ 2782

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 ACJ 1403 (SC)].

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, cooperation, affection, and aid of the other in every conjugal relation'. [*Black's Law Dictionary:* 5th Edn., 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 paining'.

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 the word 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 towards loss of love, affections, 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 the parents have 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.

Parental consortium is awarded to the 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 v. Sohi Ram,* 2017 (4) RLW 3368 (Raj) and Uttarakhand High Court in *Rita Rana v. Pradeep Kumar,* 2014 (3) UC 1687 and Karnataka High Court in *Lakshman v. Susheela Chand Choudhary,* 1996 ACJ 1265 (Karnataka). 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,* 2017 ACJ 2700 (SC).
>
> 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."

17. Learned Standing Counsel for the 2nd respondent submits that though there is no income proof, the Tribunal has rightly taken the income of the deceased as Rs.2,000/- per month and granted compensation by applying proper multiplier, as such, no interference is called for.

18. Since the appeal is only preferred for enhancement of compensation, however, other issues need not be gone into, as the same have already been recorded by the Tribunal in favour of the appellants and the only issue which has to be considered is whether the amount awarded by the Tribunal is to be enhanced or not.

19. In this case, it is to be seen that the deceased was working as Manager in Sri Sai Stone Crushers at Kannala, and earning Rs.3,000/- per month and Ex.A-7 is also filed to that effect, but the Tribunal has taken the salary of the deceased as Rs.2,000/- only per month. There is no reason for the Tribunal to discard the same by reducing his income to Rs.2,000/- per month. Even otherwise, the Apex Court in a catena of decisions has stated that even for a 'coolie' the monthly income has to be taken at Rs.4,500/-.

20. In support of this contention, learned counsel for the appellants relied on the Judgment rendered by the Supreme Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance**

Insurance Company Limited[2], wherein the Apex Court has held as follows:

> "14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/- to 3,000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4,500/-."

21. In this case, the claim is that the deceased was working as a Manager in Sri Sai Stone Crushers at Kannala and earning Rs.3,000/- per month, as such Tribunal should have taken the income of the deceased as Rs.3,000/- per month, as claimed by the appellants and the multiplier '15' is only taken into account by

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[2] AIR 2011 Supreme Court 2951

taking the age of the 2nd appellant, which is erroneous, but the Tribunal ought to have taken into account the age of the deceased, which was 20 years at the time of the accident and as per **Sarla Verma and others v. Delhi Transport Corporation and Another[3],** the relevant multiplier is '18'.

22. Since the Tribunal has not taken into account the future prospects of the deceased while determining the loss of dependency and the Tribunal has awarded a meagre amount of Rs.5,000/- each to the petitioners towards loss of love and affection and no amount is awarded towards ill-health, filial consortium, loss of estate and funeral expenses, etc., in view of the same, the award of compensation granted by the Tribunal is required to be enhanced.

23. In addition, the petitioners are also entitled to 40% thereon towards future prospects by virtue of the law declared by the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others[4].**

24. In view of the above, the appellants are entitled to the following compensation:

Income of the deceased (50% of Rs.3,000/- as deceased is unmarried)	Rs.1,500/-
Add: 50% towards future prospects	Rs. 750/-
Contribution of the deceased to his family	Rs.2,250/-

[3] (2009) 6 SCC 121
[4] AIR 2017 SC 5157

25. As per **Sarla Verma's case (2 supra)**, the relevant multiplier is '18'. When the said multiplier factor '18' is applied, the loss of dependency works out to Rs.4,86,000/- (2,250 x 12 x 18). As per **Pranay Sethi's case (3 supra)** an amount of Rs.30,000/- has to be awarded towards loss of Estate and funeral expenses. An amount of Rs.40,000/- is awarded in favour of appellants (as they are parents of deceased) towards filial consortium as per judgment in **Magma General Insurance Co. Ltd.'s Case (1 supra).** Then the total compensation works out to Rs.5,66,000/-.

26. Accordingly, the MACMA is allowed granting compensation of Rs.5,36,000/- as against Rs.1,30,000/- awarded by the Tribunal and the same is accordingly granted. Appellants are entitled interest @ 7.5% per annum on enhanced compensation from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others[5].** There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A.RAJASHEKER REDDY, J

Date: 1st April, 2019

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[5] 2013 ACJ 1403 = 2013 (4) ALT 35

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2965 of 2005

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