HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2313 of 2005 & MACMA No.3350 of 2019

COMMON JUDGMENT:

Since both the appeals arise out of the common order, they are being disposed of by this common judgment.

2. Both the appeals are filed against the common order and decree dated 27-04-2005 passed in O.P.No.173 of 2003 by the M.A.C.T.-cum-District Judge, Nizamabad (for short 'the Tribunal').

3. Brief facts of the case are that on 15-01-2003, the deceased-Dama Srinivas along with his brother-in-law was going on his scooter bearing No.AP-25/D-6931 to their houses situated at Mubaraknagar, and when they reached near Vijay Public School, Mubaraknagar, one auto bearing No.AP-25/U-2053, driven by its driver at high speed and in rash and negligent manner coming from opposite direction from Armoor side, dashed his vehicle, due to which, he fell down and sustained multiple and grievous injuries and while shifting to the hospital, he succumbed to the injuries. Hence, the claimants, who are the wife, two children and parents of the deceased, filed the claim petition against the insurer and owner of the crime vehicle claiming compensation of Rs.15.00 lakhs for the death of the deceased.

4. In the claim petition, the insurer of the crime vehicle filed its counter denying the averments of the claim petition and contended

that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle only. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.6,65,500/- i.e. Rs.6,48,000/- towards loss of dependency; Rs.15,000/- towards loss of consortium and Rs.2,500/- towards funeral charges. Accordingly, it partly allowed the claim petition granting compensation of Rs.6,65,500/- with interest at 9% per annum through out against the both insurer and owner of the crime vehicle to pay the compensation jointly and severally.

6. Aggrieved by the order of the Tribunal, the insurer filed MACMA No.2313 of 2005 and claimant filed MACMA No.3350 of 2019.

7. Heard Sri E.Veeaswamy, learned Standing Counsel, for the insurer and Sri Ch.Janardhana Reddy, learned counsel for the claimants.

8. Learned counsel for the insurer contends that there is no material to show that the deceased has invested some money in the beedi business or cultivating the lands. Further, the said business is an unregistered partnership firm and his brother-in-law is only its

Managing partner. Further the deceased himself admitted about his income in the income tax returns. Therefore, considering all these aspects, the claimants are not entitled to be granted any compensation. Hence, the appeal filed by the claimants may be dismissed by allowing the appeal filed by the insurer.

9. Per contra, learned counsel for the claimants contends that the Tribunal erred in awarding meager compensation towards loss of dependency by taking monthly income @ Rs.3,000/- only instead of Rs.4,000/- at least; that the claimant is having regular source of income through beedi business and in proof of the same, he filed partnership deed and further he is also having agricultural income from the lands; and that as per latest laws laid down by the Apex Court, the claimants are entitled for compensation towards conventional head and filial charges. Hence, he prayed for fair compensation.

10. On perusal of the evidence, it is clear that the claimant is having income through beedi works and is an income tax assessee. Accordingly, the income declared before the Income Tax Department is taken on record and the income claimed under the agriculture is disbelieved since the title deeds of the lands are in the name of the father and his father is earning income out of the agriculture, there is no loss of earnings for the deceased in respect of agriculture. Hence, considering the fact of proof of income through the income tax returns, this Court considers the income of the claimant @ Rs.4,000/-

per month i.e. Rs.48,000/- per annum; that since there are five claimants/dependents, as per **Smt. Sarla Varma v. Delhi Transport Corporation**[1]**,** 1/4th deduction towards his personal expenses of the deceased is to be taken. Then it comes to Rs.36,000/- (Rs.48,000/- (-) Rs.12,000/-); that as per **National Insurance Company Limited Vs. Pranay Sethi**[2]**,** claimants are entitled towards future prospects as the deceased being himself self-employed and aged below 40 years. Hence, the claimants are entitled for 40% future prospects, then it comes to Rs.50,400/- per annum (Rs.36,000/- + Rs.14,400/-); and that since the age of the deceased is 30 years, as per **Smt. Sarla Varma** (1 supra)**,** '17' multiplier is to be applied, then his total annual income comes to Rs.8,56,800/- (Rs.50,400 x 17).

11. Further, The Tribunal granted Rs.15,000/- towards loss of consortium and Rs.2,500/- towards funeral, totaling Rs.17,500/-. However, compensation granted under these heads is to be re-determined since the deceased was a married person, the claimants are entitled to be granted compensation of Rs.70,000/- towards conventional head, which is covered all these heads, as per the decision of the Supreme Court in **Pranay Sethi** (1 supra). Hence, instead of granting Rs.17,500/- under these heads, fixed amount of Rs.70,000/- is granted to the claimants.

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[1] (2009) 6 S.C.C. 121
[2] 2017 (6) 170 (SC)

12. Further, as per **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram**[3] **,** claimant Nos.2 and 3/children are entitled for Rs.50,000/- each towards love and affection and claimant Nos.4 and 5/parents are also entitled for Rs.40,000/- each, which comes to Rs.1,80,000/-.

13. Therefore, the claimants are granted total compensation of Rs.11,06,800/- (rounded off to Rs.11,07,000/-) under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of dependency	Rs.6,48,000/-	Rs.8,56,800/-
02.	Loss of Consortium	Rs. 15,000/-	Nil
03.	Funeral expenses	Rs. 2,500/-	Nil
04.	Conventional head	Nil	Rs. 70,000/-
05.	Loss of filial	Nil	Rs.1,80,000/-
	Total	Rs.6,65,500/-	Rs.11,06,800/- (Rs.11,07,000/-)

14. In the result, M.A.C.M.A.No.2313 of 2005 filed by the insurer is dismissed and M.A.C.M.A.No.3350 of 2019 filed by the claimants is allowed by enhancing the compensation awarded by the Tribunal from Rs.6,65,000/- to Rs.11,07,000/- (Rupees Eleven Lakhs and Seven Thousand only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The respondents are directed to deposit the enhanced amount jointly and severally along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the entire amount. No costs.

[3] 2018 Law Suit (SC) 904

15. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 26.09.2019
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