**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**M.A.C.M.A.No.3050 OF 2005**
**AND**
**M.A.C.M.A.No.2135 OF 2012**

**COMMON JUDGMENT:**

MACMA No.3050 of 2005 is filed by the claimants and MACMA No.2135 of 2012 is filed by the insurance company against the award and decree, dated 09.09.2005 passed in O.P.No.956 of 2002 by the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. The brief facts are that on 14.02.2002 the deceased Smt R.Latha went out of the house to attend some banking transaction and purchase household articles from Foodworld Super Market situated at Road No.1, Banjara Hills, Hyderabad, while she was returning home, a lorry tanker bearing No. ABT 1655 came and hit her from backside in a rash and negligent manner, when she was walking on footpath opposite to a temple nearby and dragged her, for which she fell under the back tyres of the lorry tanker and died on the spot. The police registered a case in Crime No.94 of 2002. The deceased was a graduate and worked in Jam High School at Bangalore and at Hyderabad, she was conducting tuitions up to 10$^{th}$ standard for all subjects and earning Rs.9,000/- per month and saving Rs.5,000/- per month in postal savings apart from paying Rs.42,760/- towards housing loan at Yallanka, Bangalore. Therefore, the claimants claimed compensation of Rs.11,89,000/-.

5. Before the tribunal, respondent No.1 remained exparte and respondent No. 2 filed counter denying the claim petition.

6. In order to prove the case of the claimant before the tribunal, PW.1 was examined and marked Exs.A1 to A.21 on their behalf. Ex.B.1-copy of insurance policy was marked and no oral evidence was adduced on behalf of the respondents.

7. On considering the oral and documentary evidence, the tribunal granted compensation of Rs.6,16,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realisation and that as the petitioners are not able to establish positively the income of the deceased, notional income of Rs.3,000/- has been taken, 1/3rd deducted towards her personal expenses, applied multiplier 16 as per II Schedule and that Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of consortium.

8. Learned counsel for the claimants contended that the tribunal failed to assess the earnings of the deceased and that the compensation granted by the tribunal is very meagre and that the tribunal failed to properly consider the evidence and documents and hence, prayed to grant just and proper compensation.

9. Learned standing counsel for the Insurance Company contended that the amount awarded by the tribunal is excessive and that the tribunal failed to Ex.A.8- report of the M.V. Inspector that the accident occurred due to failure of the break system (mechanical failure) and not due to rash and negligent driving of the lorry tanker by its driver and that the respondent No.4 failed to maintain the insured lorry tanker in a road worthy condition, as such violated the terms and conditions of the

insurance policy i.e. Ex.B.1 and that the tribunal failed to see that the claim application was filed by respondents 1 to 3 under Section 166 of the M.V.Act as such the multiplier prescribed in II schedule under Section 163-A of the M.V Act is not application and that the minor children are not entitled to claim compensation as they are dependant upon their father but not their mother, since the mother has no legal obligation to maintain the children unlike the father and prayed to set aside the order passed by the tribunal.

10. There is no dispute with regard to the manner of accident and involvement of the vehicle. Ex.B.1 – insurance policy is in force at the time of accident. The tribunal has rightly held that there was rash and negligent driving of the driver of the lorry. The deceased worked as teacher at Bangalore and undertaking tuitions at Hyderabad. In view of her savings in medical health cards and statement of account, this Court feels that considering Rs.5,000/- per month towards her income is reasonable. As per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**[1]**,** since the claimants are three in number, 1/3rd of her personal expenses have to be deducted. As per the decision of **Sarala Verma's** case referred supra, when the age of the deceased is 36 years, the relevant multiplier applicable is '15'. The deceased is self employed, as per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**[2] the claimants are entitled for 40% future prospects when the age of the deceased is 36 years married and Rs.70,000/- under conventional heads can be granted which is just and proper. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram**

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[1] 2009 ACJ 1298
[2] 2017(6) 170 (SC)

**Alias Chuhru Ram[3],** the father and minor son and daughter of the deceased are entitled for Rs.50,000/- each as filial. The annual income of the deceased comes to Rs.56,004/- (Rs.5,000/- minus 1/3rd (Rs.1,666/-) plus 40% (Rs.1,333/- x 12). Applying relevant multiplier '15, loss of dependency comes to Rs.8,40,060/- (Rs.56,004/- x15). Thus, the claimants are entitled for total compensation of Rs.10,10,060/- (Rs.8,40,060/- + Rs.70,000/- + Rs.1,00,000), which rounded to Rs.10,10,000/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realization. Respondents 1 and 2 are directed to deposit the compensation amount within three months from the date of this judgment. The claimants are entitled to withdraw the compensation amount soon after the deposit is made.

11. In view of the above, M.A.C.M.A.No.3050 OF 2005 filed by the claimants is partly allowed and M.A.C.M.A.No.2135 of 2012 filed by insurance company is dismissed. There shall be no order as to costs.

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

**T.AMARNATH GOUD,J**

Date 29.10.2019
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[3] 2018 Law Suit (SC) 904