THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.1314 OF 2005 and 3056 OF 2005

COMMON JUDGMENT:

MACMA.No.1314 of 2005 is preferred by the claimants and MACMA.No.3056 of 2005 is preferred by the 2nd respondent/insurance company questioning the order of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal) in O.P.No.586 of 2001 dated 14.02.2005.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is the wife, the 2nd petitioner is the daughter and the 3rd petitioner is the mother of the deceased-Eshwaraiah. On 16.06.2000 at about 7.00 a.m. while the deceased was proceeding towards Langer House side from his office, a lorry bearing No.ABT 9691, driven by its driver in a rash and negligent manner, dashed against the deceased. Due to the said accident, the deceased received injuries and died at about 11.00 a.m. on the same day while undergoing treatment at CDR Hospital, Hyderabad. Prior to the accident, the deceased worked as a regular Majdoor in SDOP Office, Golconda, Department of Telecommunications, and due to the sudden demise, the petitioners were left without any income.

Hence, the petitioners filed the claim petition claiming compensation of Rs.5,50,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4. In the claim petition, both the respondents filed separate counters denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 & 2 and R.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-6 & Exs.B-1 & B-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.3,63,000/-, i.e., Rs.3,60,000/- towards loss of dependency and Rs.3,000/- towards transportation and funeral expenses, with interest @ 7% per annum from the date of petition till the date of realization, payable by both the respondents. Aggrieved by the said order, the claimants filed MACMA.No.1314 of 2005 and the 2nd respondent/insurance company filed MACMA.No.3056 of 2005.

6. Heard Sri K.Govardhana Reddy, learned counsel for the claimants and Sri G.Purushotham Rao, learned standing

counsel for the 2nd respondent/insurance company. Perused the material record.

7. Sri K.Govardhana Reddy, learned counsel for the claimants, submitted that though the claimants produced Ex.A-5-Salary Certificate of the deceased to show that the deceased was earning Rs.4,647/- per month by working as regular Mazdoor in SDOP Office, Golconda, at the time of the accident, the Tribunal erroneously disbelieved the same and fixed the income of the deceased at Rs.3,000/- per month i.e., Rs.100/- per day, which is very low. He further submitted that the claimants are also entitled to addition of 50% on the income of the deceased towards future prospects as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1] and the claimants are also entitled to Rs.70,000/- towards conventional heads as per the decision reported in **Pranay Sethi's** case (supra). He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**[2], the 2nd petitioner/2nd claimant, being the minor daughter of the deceased, is entitled to Rs.50,000/- towards loss of love and affection and the 3rd petitioner/3rd claimant, being the mother of the deceased, is entitled to Rs.40,000/- under the head of loss of filial consortium and prayed to allow the appeal.

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[1] 2017(6) ALD 170 (SC)
[2] 2018 LawSuit (SC) 904

8. Sri G.Purushotham Rao, learned standing counsel appearing for the 2nd respondent/insurance company submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

9. Admittedly, as per Ex.A-5-Salary Certificate of the deceased, prior to the accident, deceased was earning Rs.4,647/- per month by working as regular Mazdoor in SDOP Office, Golconda, but the Tribunal has erroneously disbelieved the same and fixed the income of the deceased at Rs.3,000/- per month i.e., Rs.100/- per day, which is very low. Therefore, this Court is inclined to take the monthly salary of the deceased @ Rs.4,647/-. Apart from the same, since the deceased worked as a regular Mazdoor and aged about 35 years as on the date of the accident, the claimants are entitled to addition of 50% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.6,971/- (Rs.4,647/- + Rs.2,324/- (50%)), and after deduction of 1/3rd towards personal deductions of the deceased since there are three family members of the deceased, the monthly income of the deceased would come Rs.4,647/- (Rs.6,971/- - Rs.2,324/- (1/3)). Therefore, the annual income of the deceased comes to Rs.55,764/- (Rs.4,647/- X 12 months). The multiplier for the age of the deceased is '16' as per the decision reported in **Sarla Verma**

and others v. Delhi Transport Corporation and Another[3]. Hence, the compensation under the head of 'loss of dependency' comes to Rs.8,92,224/- (Rs.55,764/- X 16). The claimants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru Ram**'s case (supra), a sum of Rs.50,000/- is granted to the 2nd petitioner/2nd claimant, who is the minor daughter of the deceased, and a sum of Rs.40,000/- is granted to the 3rd petitioner/3rd claimant, who is the mother of the deceased. Therefore, the total compensation comes to Rs.10,52,224/- (Rs.8,92,224/- + Rs.70,000/- + Rs.50,000/- + Rs.40,000/-).

10. In the result, M.A.C.M.A.No.1314 of 2005 filed by the claimants is allowed enhancing the compensation amount awarded by the Tribunal from Rs.3,63,000/- to Rs.10,52,224/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,50,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of

[3] (2009) 6 SCC 121

deficit court fee. M.A.C.M.A.No.3056 of 2005 filed by the 2nd respondent/insurance company is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 11th November, 2019

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