HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.1232 AND 3545 OF 2012

COMMON JUDGMENT:

Appellants in former appeal (MACMA No.1232 of 2012) laid a claim petition in O.S.No.1657 of 2006 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court) - cum - XIX Addl. Chief Judge, City Criminal Courts at Hyderabad, under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') seeking a compensation of Rs.6,00,000/- (Rupees Six Lakhs only) for the death of D. Krishna, who is father of appellant Nos.1 to 3 and son-in-law of appellant No.4, while the very same appellants being appellants in latter appeal (MACMA No.3545 of 2012) filed separate claim petition in O.P. No.1658of 2006 on the file of the Chairman, Motor Accident Claims Tribunal - cum - XII Additional Judge (Fast Track Court), City Civil Court, Hyderabad, under Section 166 of the Act, seeking a compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) for death of D. Malleshwari, who is mother of appellant Nos.1 to 3 and daughter of appellant No.4.

2. Since parties, date of accident and crime vehicle in both the appeals are one and the same except the orders that were passed by different Tribunal, both these appeals are being disposed of by way of a common judgment.

3. Aggrieved by the order and decree, dated 19.09.2008, passed by the learned V Additional Metropolitan Sessions Judge (Mahila Court) - cum - XIX Addl. Chief Judge, City Criminal Courts at Hyderabad, in O.P.

No.1657 of 2006, the appellants preferred the former appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), while the latter appeal is filed by the very same appellants aggrieved by the order and decree, dated 02.09.2008, passed by the learned the Chairman, Motor Accident Claims Tribunal - cum - XII Additional Judge (Fast Track Court), City Civil Court, Hyderabad in O.P. No.1658of 2006.

4. The Tribunal, by the aforesaid order challenged in the former appeal, awarded a sum of Rs.4,14,000/- with interest at 7% per annum thereon as compensation as against the claim laid by the appellants herein under Section 166 of the Act for Rs.6,00,000/- for the death of father of appellant Nos.1 to 3 and apportioned the same to them equally, while rejecting the apportionment to appellant No.4 on the ground that he is not the legal heir of deceased - D. Krishna. Whereas, the Tribunal awarded a sum of Rs.3,96,000/- by the order as against which the latter appeal preferred with interest at 7.5% per annum thereon sharing at the rate of Rs.1,00,000/- each by appellant Nos.1 to 3 and Rs.96,000/- by appellant No.4, who is father of deceased D. Malleshwari, as against the claim laid for Rs.5,00,000/- under Section 166 of the Act.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in O.P. No.1657 of 2006.

4. Appellant Nos.1 to 3 - petitioner Nos.1 to 3 are minor children of both the deceased father - D. Krishna and deceased mother -D. Malleshwari

and appellant No.4 - petitioner No.4 is their maternal grandfather, while respondent Nos.1 and 2, who are owner and insurer of the lorry bearing registration No.AP 16U 5707, respectively, are arrayed as such.

5. Brief facts that led to filing both the claim petitions are on 17.05.2006 at about 8.30 a.m., the deceased father and mother along with their children and maternal grandmother of the children were proceeding in a Maruthi Van bearing registration No.AP 10H 556 from Bhongir to Hyderabad on the extreme left side of the road and when they reached near Maheshwari Rice Mill, Ankushapur, lorry bearing registration No.AP 16U 707 came from opposite direction in a rash and negligent manner and dashed the Van, due to which, maternal grandmother of the children died on the spot and parents of the children died in Gandhi Hospital while undergoing treatment.

i) The deceased father of the petitioners, who was aged 35 years, was earning a sum of Rs.10,000/- per month by running a pan shop, while their deceased mother, who was aged 30 years, was earning a sum of Rs.4,000/- per month by doing tailoring work and, thus, they sought to grant compensation of Rs.6,00,000/- and Rs.5,00,000/- respectively.

6. Respondent No.1, owner of lorry, remained *ex parte* before the Tribunals in both the cases.

7. Respondent No.2 - Insurer of the lorry filed counters in both the cases denying the manner in which the accident had occurred and the

income of the deceased parents etc. and finally requested to dismiss the claims with costs.

8. The Tribunal framed three issues in both the cases for trial. During inquiry in O.P. No.1657 of 2006, maternal grandfather of the petitioners, who is arrayed as petitioner No.4, was examined himself as PW.1 while petitioner No.1 was examined as PW.2 and got marked Exs.A-1 to A-11, whereas in O.P. No.1658 of 2006 the very same witnesses were examined as PWs.1 and 2 and got marked Exs.A-1 to A-5. In both the cases, Ex.B-1, copy of insurance policy was marked on behalf of respondent No.2 - Insurer.

9. After hearing both sides and analyzing the evidence on record, respective Tribunals in both the claim petitions, gave a finding on issue No.1 that the accident had occurred due to rash and negligent driving of the driver of the lorry, and on issue No.2, on appraisal of evidence on record, awarded Rs.4,14,000/- and Rs.3,96,000/- respectively as compensation with interest at 7% per annum thereon.

10. Dissatisfied with the quantum of amounts awarded by the respective Tribunal, the petitioners preferred the above appeals separately contending that the respective Tribunals have not considered the annual earnings of their deceased parents properly and also their ages.

11. Heard Sri P. Ramakrishna Reddy, learned counsel for the petitioners - appellants in both the appeals and Sri S. Harinath Reddy,

learned counsel for respondent No.1 while Sri N.S. Bhaskara Rao, learned counsel for respondent No.2.

12. It is contended by the learned counsel for the petitioners that what was awarded by the respective Tribunals is very low and the Tribunals ought to have awarded more compensation keeping in view the annual earnings of the deceased parents and their ages and, therefore, requested to award the compensation as claimed by the petitioners.

13. Whereas, learned Standing Counsel for respondent No.2 - Insurer would submit that there is no infirmity in the orders passed by the respective Tribunals as the Tribunals have gone through the entire evidence on record, and that the Tribunals have dealt with elaborately and arrived at the sums to which the petitioners were entitled, as such, requested to dismiss both the appeals.

14. Perused the material, both oral and documentary, on record. There is no dispute regarding cause of the accident and, therefore, needs no discussion on issue No.1 in both the cases.

15. Now coming to the claim petition filed in O.P. No.1657 of 2006, as against which MACMA No.1232 of 2012 is filed, the only dispute to be resolved is as to quantum of compensation to which the petitioners are entitled. The petitioners claimed a sum of Rs.6,00,000/- for the death of their father - D. Krishna. As against the said amount, the Tribunal granted a

sum of Rs.3,84,000/- by taking monthly income of the deceased father at Rs.3,000/-, deducting 1/3rd thereof and applying multiplier '16' considering the age of the deceased father as 32 years. That apart, the Tribunal also granted a sum Rs.30,000/- towards loss of love and affection and, thus, granted a total sum of Rs.4,14,000/- as compensation.

i) On perusal of record, the petitioners neither produced documents in proving the income of the deceased father, nor adduced any evidence to that effect. Though Ex.A-11 income certificate issued by Ward Councilor was filed by the petitioner, the same was not substantiated by examining the person, who issued it. In the absence of income proof, the Tribunal has taken the aforesaid amount of Rs.3,000/- as monthly income of the deceased father keeping in view his avocation. It is on record that the deceased father of petitioner Nos.1 to 3 was running a pan shop and that he was maintaining a Light Motor Vehicle (Maruti Van), in which the deceased father, his wife and petitioner Nos.1 to 3 were travelling on the date of accident and the same was got damaged in, but the same was not rebutted by respondent No.2 by adducing any evidence. In such circumstances and in view of the decision of the Apex Court in **Syed Sadiq v. Divisional Manager, United India Insurance Company Ltd.**[1], income of the deceased father can safely be taken at Rs.6,500/- per month or Rs.78,000/- per annum.

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[1]. 2014 ACJ 627

ii) As per Ex.A-6, date of birth of the deceased father was 07.06.1973 and by the date of accident, the deceased father must have completed 32 years. So, the relevant multiplier for the persons between the age group of 31-35 years is '16' as per the decision of the Apex court in **Sarla Verma v. Delhi Transport Corporation**[2] and accordingly the same is taken for the purpose of computation of compensation.

iii) In the present case petitioner Nos.1 to 3 are minors, who are daughters and son of the deceased - D. Krishna. As petitioner No.4 is the father-in-law of the deceased - D. Krishbna, he cannot be construed as a legal heir, as per the provisions of the Hindu Succession Act, 1956, and hence, he is not entitled to compensation. More over, it has been brought to the notice of this Court that petitioner No.4 died during pendency of the appeals as per the death certificate filed along with a memo by the learned counsel for the petitioners and, therefore, the appeal against him stands dismissed as abated. When Petitioner Nos.1 to 3, who are minors, are dependants on their deceased father and since they are three in number, 1/3rd has to be deducted from the monthly income of the deceased father towards his personal expenses.

iv) As stated supra, the monthly income of the deceased arrived at by this Court is Rs.6,500/- and when 1/3rd is deducted thereof, the actual monthly income of the deceased father would be Rs.4,333/- to which petitioner Nos.1 to 3 are entitled and accordingly annual income comes to

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[2]. 2009 ACJ 1298

Rs.51,996/- and when the same is multiplicand with the relevant multiplier arrived at ‘16’, it works out to Rs.8,31,936/- and, accordingly, the same is awarded to the petitioners towards the loss of future income of the deceased father. That apart, petitioner Nos.1 to 3 are also entitled some amount towards future prospects as their father died at the prime age and had he alive, he would have bright future prospects as has been held by the Apex Court in **National Insurance Company Ltd., v. Pranay Sethi**[3]. Since the age of the deceased father was taken as 32 years and since the deceased was running a pan shop business he can be construed as self-employed. In such circumstances, loss of future prospects can be assessed at 40% in view of the decision in **Pranay Sethi**[3] and accordingly, 40% would work out to Rs.3,32,774/- [40% of Rs.8,31,936/-] to which the petitioners are entitled.

v) In addition to the above, petitioner Nos.1 to 3 are also entitled to Rs.30,000/- under conventional heads. Towards loss of love and affection, the Tribunal awarded a sum of Rs.10,000/- each to petitioner Nos.1 to 3, but the same is enhanced to Rs.50,000/- each to petitioner Nos.1 to 3, making a total of Rs.1,50,000/- in view of the decision of the Apex Court in **Magma General Insurance Company Ltd. v. Nanu Ram**[4].

vi) Thus, in all, petitioner Nos.1 to 3 are entitled to Rs.13,44,710/- (Rupees thirteen lakhs forty four thousand seven hundred and ten only) as against the amount of Rs.4,14,000/- awarded by the Tribunal. Interest on the

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[3]. (2017) 16 SCC 680
[4]. 2018 ACJ 2782

enhanced amount shall carry at 7.5% per annum thereon in view of the decision of the Apex Court in **Rajesh v. Rajbir Singh**[5]

16. Now coming to the claim petition made in O.P. No.1658 of 2006 as against which MACMA No.3545 of 2012 preferred. This claim petition arises out of death of mother of petitioner Nos.1 to 3 and daughter of petitioner No.4. As already stated supra, petitioner No.4 cannot be considered to be a dependant. More over, petitioner No.4 died during pendency of the appeals as per the copy of death certificate filed along with a memo by the learned counsel for the petitioners and, therefore, the appeal against him stands dismissed as abated.

i) In this case, the petitioners claimed a sum of Rs.5,00,000/- for the death of their mother - D. Malleshwari. As against the said amount, the Tribunal granted a sum of Rs.3,96,000/- by taking her monthly income at Rs.3,000/- and deducting 1/3rd thereof and applying multiplier '16.51' considering her age as 30 years.

ii) On perusal of the record, it is evident that the petitioners have not produced any proof to substantiate the income of the deceased mother and that led the Tribunal to take her income at Rs.100/- per day. In such circumstances, monthly income of the deceased mother can safely be taken at Rs.5,000/- in view of the decision of the Apex Court in **Arun Aggarwal**

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5. 2013 ACJ 1403

v. National Insurance Company Ltd.[6]. Since petitioner Nos.1 to 3 are considered to be the dependants of the deceased mother who are three in number, 1/3rd can be deducted from her monthly income and when the same is deducted, it would work out to Rs.3,333/- per month or Rs.39,996/- per annum.

iii) As per the evidence, age of the deceased mother is 30 years. For the persons between the age group of 26-30 years, as per the decision of the Apex Court in **Sarla Verma**[2], the relevant multiplier is '17' and when the same is multiplicand, it would come to 6,79,932/- (Rs.39,996 x 17).

iv) Apart from the above, minor children of the deceased mother are also entitled for future prospects since their mother died at her prime age. In fact, her services towards children cannot be measured in terms of money. Considering the same and as per the evidence deceased mother was doing tailoring work, she can be termed as 'self-employed' and, therefore, towards loss of future prospects can be assessed at 40% as per the decision of **Pranay Sethi**[3]. 40% future prospects are accordingly worked out to Rs.2,71,973/- (40% of Rs.6,79,932/-) and the same is awarded.

v) In addition to the above, petitioner Nos.1 to 3 are also entitled to a sum of Rs.30,000/- towards conventional and another sum of Rs.50,000/- each to petitioner Nos.1 to 3 making a total of Rs.1,50,000/- towards loss of love and affection.

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[6]. 2010 ACJ 2161

vi) Thus, in all, petitioner Nos.1 to 3 are entitled to Rs.7,31,905/- (Rupees seven lakhs thirty one thousand nine hundred and five only) towards compensation as against the amount of Rs.3,96,000/- awarded by the Tribunal. Interest at 7.5% per annum shall carry on the enhanced amount.

17. The respective compensation amounts in both the appeals shall be apportioned among petitioner Nos.1 to 3 equally. Since this Court has granted compensations more than the claim made by the petitioners, the appellants - petitioners are directed to pay Court fee on the excess amounts than the claim made by them in both the appeals within three months from the date of receipt of a copy of the order.

18. With the above discussion, both the Motor Accident Civil Miscellaneous Appeal are allowed in so far as petitioner Nos.1 to 3 are concerned, and the orders and decrees, dated 19.09.2008 and 02.09.2008 passed by the Tribunals in O.P. Nos.1657 of 2006 and 1658 of 2006, respectively, are modified enhancing the compensation amounts to the extent indicated in the above. However, both the appeals against petitioner No.4, who died during pendency of the proceedings before this Court, stand dismissed as abated. In the circumstances, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeals shall stand closed.

T. AMARNATH GOUD, J

August 02, 2019

<u>Note</u>:
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(B/O.) Mgr