THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

MA.CMA. No.3418 of 2005

JUDGMENT:

This appeal is filed by petitioners in O.P.No.627 of 2002 on the file of Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar, for enhancement of compensation granted by Tribunal to a tune of Rs.7,09,200/- whereas they claimed a sum of Rs.13,00,000/- therefor.

It is the case of appellants that appellant No.1 and appellant Nos.2 & 3 are wife and children of Mr. Vaikuntam; that on 31.07.2002, at about 10.00 p.m., the said Vaikuntam boarded an APSRTC Bus to go to Hyderabad and when they reached CISF Gate, Hakeempet, Hyderabad, at about 4.30 p.m., one lorry bearing No.AP9 W 6378, driven by its driver, respondent No.1, was going in front of that bus and driver of lorry suddenly applied brakes without any indication, as a result of which, the bus dashed the lorry from behind, due to which, the said Vaikuntam sustained fatal injuries and died on the spot; the deceased was working as EP Operator and earning Rs.11,534/- per month; that due to his death, appellants had lost all their future hopes and source of income and thereby, they claimed compensation of Rs.13,00,000/- against respondents by way of filing O.P.

The Tribunal on appreciation of oral and documentary evidence, awarded compensation of Rs.7,88,000/- to appellants, but, deducted Rs.78,800/- from out of the said compensation towards contributory negligence on the part of the deceased, as such, awarded net compensation of Rs.7,09,200/- to appellants. Against the said order, this appeal is filed.

Learned counsel for appellants submits that income of deceased was taken by Tribunal only at Rs.8,000/- whereas income of deceased was Rs.12,000/- per annum and that multiplier '12' was taken by Tribunal by following the judgment of this Court reported in **Bagawandas v. Mohd. Arif**[1], but, as per judgment of Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**[2]**,** appropriate multiplier would be '14'. He further submits that Tribunal awarded Rs.10,000/- to appellant No.1 towards consortium, but, she is entitled to Rs.40,000/- as per judgment of the Constitution Bench of Apex Court in **National Insurance Company Limited v. Pranay**

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[1] 1987(2) ALT 137
[2] (2009) 6 Supreme Court Cases 121

Sethi[3] and that no amount was granted by Tribunal towards future prospects.

On the other hand, learned Standing Counsel for insurance company appearing for respondents submits that though there is no fixed income for deceased, Tribunal has exorbitantly granted compensation of Rs.7,09,200/- to appellants and that Tribunal rightly deducted 10% towards contributory negligence on the part of driver of RTC Bus, in which, deceased was travelling.

It is to be seen that in order dated 24.02.2004 in O.P.No.764 of 2002, which arose out of same accident, Tribunal held that driver of lorry itself is responsible for occurrence of accident and said order has become final, as no appeal is filed by insurance company. In view of same, finding recorded by Tribunal in the subject O.P. that there is contributory negligence @ 10% on the part of driver of bus, in which, deceased was travelling, is without any basis and same cannot be sustained, however, no issue is framed in respect thereof. In view of same, different yardstick cannot be applied in respect of claims arising out of the same accident, more so, when parties are same in both O.P.s.

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[3] (2017) 16 SCC 680

Coming to the assessment of compensation, it is evident from Exs.A.7 and A.8 - salary certificate and pay slips of deceased that deceased was drawing a salary of Rs.11,534/- and deductions were at Rs.3,570/-, and his salary varied from Rs.12,000/- to Rs.5,000/- per month, respectively. Tribunal also considered 10% bonus and rightly taken average salary of Rs.8,000/- per month. However, as per the judgment of a Constitution Bench of Apex Court in **Pranay Sethi** (2 supra), 30% of income of deceased is to be added towards future prospects. On applying the same, income of deceased would be Rs.1,24,800/- per annum {Rs.96,000/- (8,000 x 12) + Rs.28,800/- (Rs.96,000/- x 30/100)}. Further, appellants are three in number, as such, 1/3rd should be deducted towards personal expenses of deceased from his income. Then, loss of contribution to family comes to Rs.83,200/- per annum. For the age of deceased, as per the judgment of Apex Court in **Sarla Verma** (1 supra), appropriate multiplier is '14'. Thus, total loss of contribution to family comes to Rs.11,64,800/- (Rs.83,200/- x 14). Further, as per **Pranay Sethi** (2 supra), Rs.30,000/- may be awarded towards loss of estate and funeral expenses. It is to be noted that as per **Pranay Sethi** (3 supra), appellant No.1 is entitled to Rs.40,000/- towards consortium instead of Rs.10,000/- as was granted by

Tribunal. Further, Tribunal granted Rs.10,000/- only towards love and affection i.e., parental consortium, but, in view of judgment of Apex Court in **Magma General Insurance Company Limited v. Nanuram and others**[4], the same is enhanced to Rs.1,00,000/-. Thus, appellants are entitled to a total compensation of Rs.13,34,800/-.

The enhanced compensation is apportioned among appellants in proportion to the amounts granted to them by Tribunal except Rs.40,000/- granted to wife of deceased towards consortium and Rs.1,00,000/- to children of deceased towards parental consortium.

In the result, this appeal is allowed in part, enhancing the compensation from Rs.7,09,200/- to Rs.13,34,800/-. However, on the enhanced compensation of Rs.6,25,600/-, appellants are entitled to interest @ 7.5% per annum from the date of petition till realization. Tribunal is directed to deduct differential Court fee from enhanced compensation.

Consequently, Miscellaneous Petitions, if any pending, shall stand disposed of. No order as to costs.

A. RAJASHEKER REDDY, J

2nd APRIL, 2019.
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[4] 2018 ACJ 2782