THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 98 OF 2006

JUDGMENT:

This appeal is directed by the insurance company against the award dated 10.10.2005 in O.P.No.71 of 2002 passed by the IV-Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short 'the Tribunal), whereby the Tribunal granted compensation of Rs.23,99,500/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization on account of the death of the deceased M.Madhava Reddy caused in a motor vehicle accident occurred on 06.10.2001 at about 09.30 a.m., while the deceased going on his Maruthi Car bearing No. AP 9 AG 56 from Hyderabad to Manneguda, when he reached Injapur Village on Nagarjuna Sagar Road, driver of a mini bus bearing No.ADT 9202 came from opposite side in a rash and negligent manner at high speed and dashed against the Maruthi car of the deceased, due to which the deceased received grievous injuries and died on the spot and that the Maruthi car was extensively damaged, as against the claim of Rs.42,12,000/-.

2. The 1st respondent, who is the driver remained set exparte. The 2nd respondent, who is the Commissioner of Self Employment Scheme filed counter denying all material averments in the petition and contended that the claim petition is not maintainable under law and that its not necessary party to the petition and that the setwin scheme helps the entrepreneur group to operate the fleet of

busses till they gain experience and then handover mini busses to RTC giving full control of operation and maintenance of the busses to the entrepreneur groups to facilitate them to repay the loans and that the 2nd respondent is not liable to pay the compensation.

3. The 3rd respondent – insurance company filed written statement denying all the material averments in the petition and that denied the age and monthly income of the deceased, which is highly excessive and that the deceased is not having valid driving license, no experience in driving the Maruthi car and that the deceased himself contributed for the accident.

4. The claimants are wife, children and mother of the deceased. In order to prove the case of the claimants, PWs.1 to 4 were examined and marked Exs.A1 to A14 on their behalf and Ex.B.1 copy of insurance policy was also marked. No oral evidence is adduced on behalf of the respondents.

5. A perusal of the oral and documentary evidence, the tribunal framed the following issues:

1) Whether the deceased died due to rash and negligent driving of the driver of Mini Bus No. ADT 9202?
2) Whether the petitioners are entitled for compensation, if so to what amount and from whom?
3) To what relief?

6. On considering the material available on record, the tribunal partly allowed the original petition on the ground that PW.4 is the direct witness that the deceased died due to rash and negligent

driving of the driver of mini bus and that Ex.B.-1-insurance policy is in force on the date of accident as such the 3rd respondent is liable to pay the compensation amount and that granted compensation of Rs.23,99,500/- by taking annual income of the deceased as Rs.1,26,000/- by deducting 1/3, as the age of the deceased is 41 years applied multiplier '15' and other heads i.e. loss of funeral expenses, loss of estate and loss of consortium.

7. Learned standing counsel for the insurance company contended that the compensation granted by the tribunal is highly excessive and exorbitant and that the tribunal wrongly applied multiplier '15' to the age of 41 years of the deceased at the time of accident as per the decision of the Apex Court and that fixing income of the deceased on the basis of Ex.A.5-charge sheet is without considering the income tax returns properly and that there cannot be any loss of income from agriculture to the claimants even after the death of the deceased as the agricultural lands remain intact and that the tribunal wrongly deducted 1/3rd personal expenses as the claimants are 5 in number 1/4th has to be deducted. Further learned counsel for the insurance company relied on judgment of the Apex Court in **Mrs. Helen C. Rebello & Ors vs Maharashtra State Road Transport Corporation and another[1].**

8. Learned counsel for the claimants contended that the compensation granted by the tribunal is very low and relied on paras 6 and 8 of the judgment of the Apex Court in **Ranjana**

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[1] (1999)1 SCC 90

Prakash and others v Divisional Manager and another[2]. Paras 6 and 8 are as follows:

> 6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.
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> 8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts

[2] (2011) 14 SCC 639

> and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

Therefore, learned counsel for the claimants prayed to grant appropriate compensation.

9. There is no dispute with regard to the manner of the accident and involvement of the vehicle. The tribunal has rightly taken the income of the deceased as Rs.7,500/- per month, which comes to Rs.90,000/- per annum after considering all aspects. The income of the deceased from agricultural property will have to be assessed taking the deceased to be a manager of the property. The income from the agricultural land is fluctuating in every year and even after the death of deceased, the claimants, who are legal heirs as well as legal representatives of the deceased, would continue to get income from the said joint family agricultural land. When there is no loss of agriculture income, question of considering the same does not arise. Hence, the loss of income on

agriculture at Rs.81,000/- granted by the tribunal is not reasonable.

10. A perusal of the material available on record, having regard to facts and circumstances of the case, loss of supervisory income on agriculture can be granted @ Rs.40,000/- per annum. As per Ex.A.5-certified copy of charge sheet, the age of the deceased is '41' years, the relevant multiplier applicable is '14' as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another[3].** As per the decision of the apex Court in **National Insurance Company Ltd v Pranay Sethi[4],** the claimant is entitled for Rs.70,000/- towards conventional heads. The average salary of Rs.90,000/- per annum taken by the tribunal is unaltered. Therefore, the total annual income of the deceased comes to Rs.1,30,000/-(Rs.90,000/- + Rs.40,000/-). As the claimants are five in number, 1/4th towards personal expenses of the deceased have to be deducted. After deducting personal expenses of the deceased, the annual income of the deceased comes to Rs.97,500/- (Rs.1,30,000/- minus Rs.32,500/-). Applying multiplier '14', the compensation comes to Rs.13,65,000/-(Rs.97,500/- x 14). Thus, the claimants are entitled for total compensation of Rs.14,35,000/- (Rs.13,65,000/- + Rs.70,000/-) with interest @ 7.5% per annum from the date of petition till the date of realization. The compensation granted by the tribunal is reduced from Rs.23,99,500/- to Rs/.14,35,000/-.

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[3] 2009 ACJ 1298
[4] 2017(7) 170 (SC)

11 In view of the above, MACMA is allowed as indicated above. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 16.09.2019
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