THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.2030 OF 2008 & 3788 OF 2009

COMMON JUDGMENT:

Since both the appeals arise out of a common order passed in O.P.No.2751 of 2005, dated 31-10-2007, by the Chairman, Motor Accident Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal), they are being disposed of by this common judgment.

2. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.2030 of 2008.

3. The brief facts of the case are that appellant is the brother of the deceased, Rajesh Sharma @ Sonu. On 29.03.2005 at about 3.50 P.M., while the deceased was traveling in a Cruiser vehicle bearing No.AP24V 3080 from Hanamkonda towards Hyderabad, and when the vehicle reached near Raghunadhpally Police Station, the driver of said vehicle drove the same in a rash and negligent manner with high speed and dashed RTC bus bearing No.AP10Z 6671, which was coming in the opposite direction, as a result, the deceased died on the spot. The claimant filed aforesaid OP claiming compensation of Rs.2,00,000/- against respondents 1 and 2 owner and insurer of the cruiser respectively for the death of the deceased.

4. Before the Tribunal, respondent No.1 remained *ex parte.* Respondent No.2 filed its counter denying the averments of the

claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the cruiser vehicle and awarded total compensation of Rs.1,62,500/-, with interest @ 6% per annum, directing the respondents to share the compensation equally i.e., 50% each. Dissatisfied with the quantum of compensation, the appellant filed M.A.C.M.A.No.2030 of 2008, seeking enhancement of the same, while the insurance company filed M.A.C.M.A.No.3788 of 2009.

6. Smt.B.Roja Ramani, learned counsel for the appellant, submitted that the Tribunal erroneously fixed the notional income of the deceased at Rs.15,000/- per annum, which needs to be enhanced by applying appropriate multiplier as per **Smt. Sarla Varma Vs. Delhi Transport Corporation**[1]**.** She further submitted that the appellant is also entitled to addition of 40% on the income of the deceased towards future prospects and also enhancement of the compensation towards funeral charges. She further submitted that in view of the judgment of the Hon'ble Supreme Court in **United India Insurance Co.Ltd. V. K.M.Poonam**[2], the respondent insurance company is liable to pay the compensation to the appellant at the first instance and recover the same from the owner of the vehicle.

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[1] 2009 (6) SCC 1211
[2] 2018 Law Suit (SC) 904

7. Sri K.Sita Ram, learned counsel appearing for respondent No.2, submitted that insured has violated the policy conditions by allowing 18 persons to travel in the vehicle as against the permissible limit of 13 persons and therefore respondent No.2 is not liable to pay the compensation. He further submitted that the Tribunal erred in fastening the liability on respondent No.2 to the extent of 50% and prayed to exonerate the liability of respondent No.2 by setting aside the order passed by the Tribunal.

8. It is not in dispute that the deceased was aged 29 years at the time of accident. The Tribunal notionally fixed the income of the deceased at Rs.15,000/- per annum, which is meager. In the facts and circumstances of the case, this Court is inclined to fix the notional income of the deceased as Rs.36,000/- per annum. Out of the said income, 50% should be deducted towards personal expenditure as decided by the Apex Court in **Smt. Sarla Varma** (Supra). The Tribunal has wrongly adopted the multiplier of '16' instead of '17' as the deceased was aged about 29 years at the time of accident. Apart from the same, the appellant is entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, annual income of the deceased comes to Rs.50,400/- (Rs.36,000 + Rs.14,400/- future prospects). After deducting 50% towards personal expenses, the income of the deceased comes to Rs.25,200/- per annum. The multiplier for the age of the deceased is '17'. Hence, the compensation under the head 'loss of income' comes to Rs.4,28,400/- (Rs.25,200/- X 17). The appellant is also

entitled to Rs.15,000/- towards funeral charges, as per **Pranay Sethi**'s case (supra). Therefore, the total compensation comes to Rs.4,43,400/- (Rs.4,28,400/- + Rs.15,000/-).

9. Insofar as the liability of the respondents is concerned, the Apex Court in **K.M.Poonam's** case (supra) held that any of the persons traveling in the vehicle in excess of the permitted number of passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured-owner of the vehicle. Therefore, respondent No.2-insurer of the vehicle is liable to pay the compensation awarded by this Court and recover the same thereafter from the owner.

10. In the result, M.A.C.M.A.No.2030 of 2008 is allowed and M.A.C.M.A.No.3788 of 2009 is dismissed, enhancing the compensation amount awarded by the Tribunal from Rs.1,62,500/- to Rs.4,43,400/-. The enhanced amount shall carry interest @ 7.5% per annum. The appellant is directed to pay the Court fee on the difference amount awarded over and above the compensation amount claimed in the above O.P. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 05.08.2019
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