

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA Nos.2233 of 2005 & 3252 of 2005

JUDGMENT::

These two appeals MACMA Nos.2233 and 3252 of 2005 have been preferred by the claimants and the respondent-Corporation respectively against the judgment and decree passed in OP No.106 of 2001 by the I Addl. District Judge-cum-Motor Accident Claims Tribunal, at Nizamabad, (for short the "the Tribunal"). The parties hereinafter will be referred to as arrayed in the OP and both the appeals are disposed of together. It would suffice if grounds in MACMA No.2233 of 2005 are adverted to.

02. The facts stated are:-On that fateful day *i.e.* 25-8-2000 Chikoti Shyam Kumar, son of claimants 1 and 2 and brother of claimant no.3 was travelling with other passengers in Auto bearing No. ABT/2138 from Gundaram village to Nizamabad at 2-30 pm and when the auto reached near Jannepalli-Gundaram crossing, one RTC bus bearing registration No.AP9Z 8789 came from Nizamabad side to go to Nandipet village driven by its driver, in a rash and negligent manner and dashed the auto in question due to the impact of the same, the

deceased Chikoti Shyam Kumar died on the spot. In connection with the said accident, PS Rural Nizamabad registered a criminal case in Crime No.154 of 2000. Due to sudden demise of deceased, the claimants were put to shock and sorrow and they have lost their bread winner. That the deceased was aged 19 years and was studying and he had obtained diploma in Electronics and Computers and was working as part-time Computer Assistant and used to earn Rs.5000/- per month. That accident occurred due to rash and negligent driving by the driver of the RTC bus. Therefore, the claimants laid a claim for Rs.7,00,000/- against the respondents.

03. The respondent-Corporation filed counter affidavit denying the allegations made in the plaint. That the age, avocation and the culpability in causing the accident on the part of the driver of the RTC bus was denied. That OP is not maintainable as the claimants have not impleaded the insurance company of the Auto which met with the accident and in which the deceased was travelling. That the claim made by the claimants is excessive and thus prayed for dismissal of the OP.

04. The Tribunal after considering the evidence placed on record by parties, awarded compensation of Rs.1,43,000/- as against the claim of Rs.7,00,000/-.

05. Heard the learned counsel for the appellants-claimants and the learned standing for the respondents.

06. Learned counsel for the claimants submits that the deceased died in a fatal accident and despite Ex.A8 certificate issued by Delta Info-tech, Karimnagar to show that the deceased was earning Rs.3,500/- per month, the same was not considered, instead assessed meagre notional income at Rs.1,000/- per month. Learned counsel also contended that the Tribunal did not grant any amounts towards loss of future prospects and the loss of filial consortium.

07. *Per contra*, learned counsel for respondent-Corporation contented that since the deceased was student and there was no acceptable evidence to conclude that he was an earning member of the family, the Tribunal erred in awarding compensation. It is also contended that the claim is bad for non joinder of necessary party.

08. The father of the claimant was examined as PW-1 and eye

witness to the accident was examined as PW-2. It has come in the evidence of PW-2 that the accident occurred due to the rash and negligent driving of the RTC bus by its driver, and the same has not been disproved by cogent evidence, hence the culpability in causing the accident fixed on the driver of the RTC bus in question needs no interference. Nothing contra was also elicited from the cross examination of PW-1 nor any documents produced to disprove the version of PW-1 as to the age and avocation and income of the deceased.

09. Coming to the question of adequacy or otherwise of the compensation awarded by the Tribunal, it has come in the evidence of PW-1 (Father of the deceased) that prior to the date of the accident, the deceased was earning Rs.3,500/- per month. It has further come in his evidence that the deceased was a final year student of Electronics in B.Sc MPE II year and obtained certificate in Diploma in Electronics and Computer and worked as Computer Assistant (part time) and used to earn Rs.3,500/- per month. The Tribunal took the income at Rs.1,000/- per month, which is on lower

side, and in the facts and circumstances of the case it can be fixed at Rs.2,000/- per month as deceased was a final year student of Electronics in B.Sc MPE and due to his sudden death hopes and aspirations of his parents got dashed for ever. It is also to be seen that if considered the age of the deceased at 19 years, the appropriate multiplier as per the decision in **SARLA VARMA vs. DELHI TRANSPORT CORPORATION¹**, is “18” instead of “16” which the Tribunal erroneously applied. If the income of the deceased is fixed at Rs.2,000/-, in view of the verdict in **NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY SETHI²**, 40% income is to be added toward loss of future prospects and 40% of Rs.2,000/- comes to Rs.800/- i.e. $\text{Rs.2,000} + \text{Rs.800} = \text{Rs.2,800/-}$ after allowing a deduction of $\frac{1}{3}^{\text{rd}}$ towards the personal expenses of the deceased, his contribution to his family comes to Rs.1,867/-. Thus, claimants are entitled to a sum of $(\text{Rs.1,867} \times 12 \times 18 = \text{Rs.4,03,272/-})$ Rs.4,03,272/- towards loss of future income. The deceased was a student, mother died during the pendency of the appeal, the father and sister of the deceased are entitled to Rs.40,000/- each towards

¹ AIR 2009 SC 3104

² AIR 2017 SC 5157

loss of filial consortium i.e. Rs.80,000/-; in view of the decision of the Supreme Court in **MAGMA GENERAL INSURANCE COMPANY LIMITED vs. NANU RAM**³ and Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as per the law laid down in (**PRANAY SETHI supra**).

10. In the circumstances, the claimants are entitled to following compensation under different heads:-

Loss of future earnings	:-	Rs. 4,03,272/-
Loss of estate	:-	Rs. 15,000/-
Funeral expenses	:-	Rs. 15,000/-
Loss of filial consortium	:-	Rs. 80,000/-
Total:-		Rs. 5,13,272/-

(Rupees Five Lacs thirteen thousands two hundred seventy two only)

11. The claimants are also entitled to interest @ Rs.7.5 % per annum on above-mentioned compensation amount from the date of filing of claim petition till realization of entire compensation amount. In the result, the appeal filed by the claimants is allowed in part and the appeal filed by the respondent-Corporation is dismissed, the impugned award passed by the Tribunal is modified and the

³ 2018 SCC OnLine SC 1546

compensation is enhanced to Rs.5,13,272/- with interest @ 7.5 % per annum on the enhanced compensation. Time to deposit the amounts is three months, minus the amounts if any already deposited. On such deposit, since the mother of the deceased is no more and died during the pendency of the appeal, the 1st claimant (Father) is entitled to withdraw 2/3rd and the 3rd claimant (Sister) is entitled to withdraw 1/3rd of the compensation amount along with the accrued interest thereon. In the result, MACMA No.2233 of 2005 is allowed to the extent indicated above and MACMA No.3252 of 2005 is dismissed. Miscellaneous petitions, if any pending shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 03-04-2019
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



MACMA Nos. 2233 of 2005 & 3252 of 2005

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Dated:02-04-2019

