THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.191 and 209 OF 2013

COMMON JUDGMENT:

M.A.C.M.A.No.191 of 2013 is filed by the Insurance Company and M.A.C.M.A.No.209 of 2013 is filed by the claimants aggrieved by the Order and Decree dated 28.09.2012 passed in O.P.No.1272 of 2010 by the Motor Accident Claims Tribunal-cum-X Additional Chief Judge: Fast Tract Court: City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that claimant No.1 is the husband, claimant Nos.2 and 3 are the sons and claimant No.4 is the daughter of the deceased, Bharathi. On 04.03.2010 at about 04:00 hours, while the deceased along with her relatives were travelling in Auto bearing No.AP 22 TJ T/R 2386 in order to go to their relatives house from Singareni Colony, Saidabad to Hayathnagar, and when the auto reached near Sushma X Roads, Vanasthalipuram, Hyderabad, a lorry bearing No.AP 29 U 2806 came in high speed in a rash and negligent manner and dashed against the auto. In the said accident, the deceased sustained grievous injuries. Immediately, she was shifted to Osmania General Hospital, Hyderabad and thereafter to Yashoda Hospital, Malakpet, Hyderabad, for better treatment. Later, she sent to Osmania General Hospital, Hyderabad and during treatment she succumbed to injuries. The claimants filed aforesaid OP claiming compensation of Rs.10,00,000/- against respondent Nos.1 and 2, owner and insurer of the lorry, for the death of the deceased.

3. Before the Tribunal, respondent No.2 filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. 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 lorry and awarded total compensation of Rs.7,50,000/- with interest @ 7.5% per annum i.e., Rs.7,20,000/- towards loss of income, Rs.5,000/- towards consortium, Rs.15,000/- towards loss of love and affection for the minor children together, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport and medical expenditure. Dissatisfied with the quantum of compensation, the claimants filed M.A.C.M.A.No.209 of 2013 seeking enhancement of the same and the Insurance Company filed M.A.C.M.A.No.191 of 2013 seeking to set aside the judgment passed by the Tribunal.

5. Sri Sreenivasa Rao Veeramachaneni, learned counsel for the claimants, submitted that the deceased managing the family affairs in all respects and she was having self employment business, but the Tribunal erroneously fixed the income of the deceased at Rs.5,000/- per month and the same is very low. He further submitted that the claimants are also entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.70,000/- towards conventional charges, as per the ratio

laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]**.** He further submitted that claimant No.1, being husband, is entitled to Rs.40,000/- and claimant Nos.2 to 4, being minor children of the deceased, are entitled to Rs.50,000/- each towards loss of parental consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**[2].

6. Sri A.Rama Krishna Reddy, learned Standing Counsel for Insurance Company, submitted that claimant No.1 is not dependant on the deceased and no proof of income of the deceased is filed and sought to dismiss the appeal.

7. Though no proof of income of the deceased was filed, as the deceased is stated to be doing self business that collecting the iron scrap, waste plastic and old news papers etc., from the houses at entire Saidabad area and earning Rs.300/- daily by selling the same to the whole sale shops, I am inclined to fix the income of the deceased at Rs.5,500/- per month notionally. Apart from the same, the claimants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.7,700/- (Rs.5,500/- x 40%), and after deduction of 1/4th as the dependants are four in number, the annual income comes to Rs.69,300/- (Rs.5,775/- X 12). As the deceased was aged 32 years as per Ex.A.3, the appropriate multiplier is '16'. Hence,

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[1] 2017(6) ALD 170 (SC)
[2] 2018 Law Suit (SC) 904

the compensation under the head 'loss of dependency' comes to Rs.11,08,800/- (Rs.69,300/- X 16). Apart from the same, the claimants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). As claimant Nos.2 to 4 are minor children, they are entitled to Rs.1,50,000/- (Rs.50,000/- each) towards parental consortium, as per **Nanu Ram Alias Chuhru Ram**'s case (supra). Apart from that, as per Ex.A.9 original final bill issued by the Yashoda Hospital, the claimants are entitled a sum of Rs.1,35,000/-. Therefore, the total compensation comes to Rs.14,63,800/- (Rs.11,08,800/-+Rs.70,000/-+Rs.1,50,000/- + Rs.1,35,000/-).

8. In the result, M.A.C.M.A.No.191 of 2013 is dismissed and M.A.C.M.A.No.209 of 2013 is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.7,50,000/- to Rs.14,63,800/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.10,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to pay the said compensation amount within three months from the date of this judgment. The claimants are permitted to withdraw the same as per their proportionate share of compensation.

Miscellaneous petitions pending in both the appeals, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

21st August 2019
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