

HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2532 OF 2006

AND

I.A. No.1 OF 2007 (CROSS OBJECTION (SR) No.10929 OF 2007)

COMMON JUDGMENT:

Appellant - Oriental Insurance Company Limited, filed M.A.C.M.A. No.2532 of 2006 assailing the judgment and decree dated 16.05.2006 in O.P. No.461 of 2002 passed by the Motor Accidents Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal').

2. Vide the aforesaid judgment, the Tribunal has awarded an amount of Rs.4,64,000/- towards compensation to petitioner Nos.1 and 2 therein payable by respondent Nos.1 and 2 therein jointly and severally with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization as against the claim of Rs.8,00,000/- made by the petitioners.

3. Dissatisfied with the said compensation, the petitioners therein also filed cross - objection vide I.A. No.1 of 2007 (Cross Objection (SR) No.10929 of 2007) in the present appeal seeking enhancement of compensation from Rs.4,64,000/- to Rs.8.00 lakhs and also interest from 7.5% per annum to 9% per annum.

4. The appellant - Insurer filed the above appeal disputing the quantum of compensation awarded by the Tribunal. As per the

grounds of appeal, there is no dispute by the Insurer with regard to the accident.

5. Heard Mr. A.V.K.S. Prasad, learned counsel for the appellant - Insurer and Mr. P. Radhiva Reddy, learned counsel for respondent Nos.1 and 2 - Cross-objectors.

6. The learned counsel for the appellant would submit that the Tribunal did not consider the evidence on record in proper perspective and erroneously assessed the monthly earnings of the deceased - Vachela Babu as Rs.3,000/-. Though there is no reliable evidence, the Tribunal ought to have taken the monthly earnings of the deceased as Rs.12,000/- instead of Rs.3,000/- per month since the Tribunal followed the table mentioned under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'). He would further contend that when the Tribunal had followed the table under Section 163-A of the Act, it should follow the same in toto for granting non-pecuniary damages. He would also contend that the Tribunal erred in awarding an amount of Rs.75,000/- towards love and affection.

7. With the said grounds, the learned counsel for the appellant prayed for allowing the appeal by setting aside the impugned judgment.

8. On the other hand, the learned counsel for respondent Nos.1 and 2 - cross-objectors would submit that there is no dispute with regard to the accident and the dispute by the appellant - insurer is only

with regard to quantum of compensation awarded by the Tribunal. According to him, the Tribunal, in fact, erred in awarding an amount of Rs.4,64,000/- as compensation instead of Rs.8,00,000/-. He would further contend that the Tribunal also erred in assessing the earning capacity of the deceased as Rs.100/- per day or Rs.3,000/- per month instead of Rs.400/- per day. He would also contend that the deceased was aged about 20 years as on the date of accident as per Ex.P3 - certified copy of postmortem examination report and used to earn Rs.400/- per day by doing earth work. According to him, Rs.400/- per day was the earning capacity of the deceased as on the date of accident, but instead of considering the same, the Tribunal assessed the same at Rs.3,000/- per month which is incorrect and not reasonable. According to him, the Tribunal did not grant any compensation towards future prospects of the deceased. The Tribunal wrongly had taken the multiplier as '16' instead of '18' by deducting 1/3rd towards personal expenses of the deceased. According to him, the Tribunal also erred in not awarding compensation under conventional heads.

9. The learned counsel for respondent Nos.1 and 2 - cross objectors relied upon the principles held by the Apex Court in **Sarla Verma v. Delhi Transport Corporation**¹, **National Insurance**

¹. (2009) 6 SCC 121

Company Limited v. Pranay Sethi² and Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram³.

10. On perusal of the entire record including depositions of PWs.1 to 3, Exs.A-1 to A-5 and Ex.B1, there is no dispute with regard to the accident. As per Ex.A-3 - postmortem examination report, the age of the deceased was 20 years as on the date of accident. There is no other evidence produced by the Insurer to dispute the age of the deceased as 20 years. Relying upon Ex.A-3 postmortem examination report, the Tribunal considered the age of the deceased as 20 years and the same is affirmed. Accordingly, the relevant multiplier is '18' as per the decision of the Apex Court in **Sarla Verma¹**. But, the Tribunal erroneously considered the multiplier as '16'.

11. The Tribunal assessed the monthly earning capacity of the deceased as Rs.100/- per day or Rs.3,000/- per month on the ground of 'via media' as against the claim of Rs.400/- per day made by the cross-objectors. There is no reason assigned by the Tribunal for assessing the said amount except saying 'via media'. The appellant - Insurer did not elicit anything contra from PWs.1 to 3 with regard to earning capacity of the deceased. Respondent No.2, mother of the deceased, was examined as PW.1. PW.2 is an eye-witness to the accident. PW.3, a colleague of the deceased, deposed about the nature of work done by the deceased. According to him, the deceased used

². (2017) 16 SCC 680

³. (2018) 18 SCC 130

to do earth work on contract basis throughout the year and earn Rs.400/- to Rs.500/- per day. During cross-examination, PW.3 categorically admitted that rate would be paid basing on the earth work on feet system, however, he confirms about earning of Rs.400/- to Rs.500/- per day by the deceased. Even though, the Tribunal has considered only an amount of Rs.100/- per day or Rs.3000/- per month towards earning capacity of the deceased on the ground of 'via media' and the same is unjustifiable in view of the said evidence. Accordingly, this Court is of the opinion that the earning capacity of the deceased would be Rs.150/- per day or Rs.4,500/- per month which is just and reasonable and accordingly the same is taken into consideration.

12. The Tribunal deducted $\frac{1}{3}$ rd amount of the monthly earning capacity of the deceased towards his personal expenditure. The learned counsel for respondent Nos.1 and 2 - cross-objectors would contend that the said deduction is also contrary to the principle held by the Apex Court in **Sarla Verma**¹, wherein 50% was considered to be deducted towards personal and living expenses of the deceased in case he is a bachelor. In the case on hand, the deceased is a bachelor. So, considering the said principle, this Court is also deducting 50% towards personal and living expenses of the deceased from out of the earning capacity. As already discussed supra, the monthly earnings of the deceased is arrived at Rs.4,500/- or Rs.54,000/- per annum. When 50% is deducted from Rs.54,000/-, it works out to Rs.27,000/- per

annum. The relevant multiplier is '18' and when the same is applied to Rs.27,000/- it comes to Rs.4,86,000/- (Rs.27,000 x 18) towards loss of contribution to respondent Nos.1 and 2 or loss of dependency and, accordingly the same is awarded to respondent Nos.1 and 2 - cross-objectors.

13. The Apex Court in **Magma General Insurance Company Limited**³ categorically held that the amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'loss of consortium' as laid down in **Pranay Sethi**². The Apex Court in **Pranay Sethi**² categorically held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the present case, it is an admitted fact the deceased used to do earth work on contract basis and the same would come under 'self-employed' category. Therefore, an addition of 40% of the established income should be considered in this case also, and accordingly an amount of Rs.1,94,400/- (40% of Rs.4,86,000/-) is awarded to respondent Nos.1 and 2 - cross-objectors.

14. As per the principle held by the Apex Court in **Magma General Insurance Company Limited**³, respondent Nos.1 and 2 - cross-objectors are entitled Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

15. Respondent Nos.1 and 2, father and mother of the deceased are considered as dependants for awarding filial consortium and, therefore, they are entitled to Rs.40,000/- each towards filial consortium as per the principle held in **Magma General Insurance Company Limited**³. Thus, in all, respondent Nos.1 and 2 - Cross-objectors is entitled to Rs.7,90,400/- (Rupees seven lakhs ninety thousand and four hundred only) as compensation under the following heads:

i)	Loss of dependency	.. Rs. 4,86,000-00
ii)	An addition of 40%	.. Rs. 1,94,400-00
iii)	Funeral expenses	.. Rs. 15,000-00
v)	Loss of estate	.. Rs. 15,000-00
vi)	Filial Consortium	.. Rs. 80,000-00

	Total compensation	.. Rs. 7,90,400-00

Thus, the said amount of Rs.7,90,400/- (Rupees seven lakhs ninety thousand and four hundred only) is awarded as compensation which is just and reasonable with interest at 7.5% per annum thereon. This Court is having power to grant just and reasonable compensation to which respondent Nos.1 and 2 - cross-objectors are entitled as held by the Apex Court in **Ramla v. National Insurance Company Limited**⁴.

16. In the result, M.A.C.M.A. No.2532 of 2006 filed by the Appellant - Insurer is dismissed and Cross Objection viz., I.A. No.1 of 2007 (Cross Objection (SR) No.10929 of 2007) is allowed. Accordingly, the judgment and decree dated 16-05-2006 in O.P.

⁴. (2019) 2 SCC 192

No.461 of 2002 passed by the Tribunal are modified enhancing the compensation to Rs.7,90,400/- (Rupees seven lakhs ninety thousand and four hundred only) from Rs.4,64,000/-(Rupees four lakhs and sixty four thousand only) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The compensation amount shall be apportioned between the petitioners in the same proportion in which original compensation amounts were directed to be apportioned and disbursed by the Tribunal. The appellant - Insurer is directed to deposit the above said amount with interest and costs after deducting the amount, if any, deposited earlier within one month from the date of receipt of certified copy of this judgment. There shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

06th February, 2020
Mgr

K. LAKSHMAN, J