

HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. Nos.957 OF 2006 AND 3614 OF 2008

COMMON JUDGMENT:

Feeling aggrieved by the order dated 17.10.2005 in OP No.148 of 2002 passed by Motor Accident Claims Tribunal (District Judge), Nizamabad, the claimants filed MACMA No.957 of 2006 seeking enhancement of compensation and A.P. State Road Transport Corporation filed MACMA No.3614 of 2008.

2. Vide the said judgment, the Tribunal has awarded an amount of Rs.5,58,000/- to the claimants payable by respondents 1 and 2 (APSRTC) with proportionate costs and interest @ 9% per annum from the date of petition till the date of realization. Dissatisfied with the compensation of Rs.5,58,000/- as against their claim of Rs.10,00,000/-, the claimants preferred MACMA No.957 of 2006 seeking enhancement of compensation. Aggrieved by the said Judgment awarding an amount of Rs.5,58,000/- towards compensation, the APSRTC preferred MACMA No.3614 of 2008.

3. For the sake of convenience, the parties herein are referred to as arrayed in OP No.148 of 2002.

4. According to petitioners - claimants, on 16.11.2001 at about 7.00 a.m., the deceased Ch. Parshuram was proceeding on his cycle to go to his Kirana shop. When he reached near the Kirana shop of one Chinna Bhoomaiah in Kammarpalli village, one RTC bus bearing No.AP 10 Z 8612 of Nizamabad Depot, coming from Armour side, driven by its driver in a rash and negligent manner, dashed said Ch. Parushuram, due

to which he died on the spot. According to learned counsel for the petitioners, the deceased used to run Kirana Shop and used to sell vegetables and also used to cultivate lands. Thus, in all he used to earn an amount of Rs.1,28,000/- per annum and also used to deposit an amount of Rs.72,000/- per year in four accounts as postal savings under Mahila Pradan Kshatriya Bachat Yojana. On account of untimely death of the deceased, the 1st petitioner – wife, lost her husband, petitioners 2 to 4 lost their affectionate father and the 6th petitioner lost his father-in-law. According to them, the accident occurred due to rash and negligent driving of the RTC bus bearing No.AP 10 Z 8612 and therefore, the respondents' Corporation to which the bus belongs, is liable to pay the compensation. In all, the petitioners claimed an amount of Rs.10,00,000/- towards compensation.

5. The 2nd respondent filed counter before the Tribunal disputing the accident and also the quantum of compensation. According to it, the accident was due to negligence of the deceased, who without observing the bus, tried to cross the road on cycle from left side to right side and at that particular point of time, a tractor and a lorry were parked on the road; bus was passing on the road and on seeing the cyclist suddenly coming from left to right, the driver of the bus severed the bus to the extreme right and applied brakes. But the cyclist himself hit the bus on the right side wheel, resulting in his death. With the said contentions, the respondents' Corporation prayed for dismissal of the claim filed by the petitioners.

6. The Tribunal, on consideration of the entire evidence, has awarded an amount of Rs.5,58,000/- towards compensation, under various heads.

7. Impugning the said judgment, learned counsel for the respondents' Corporation would contend that the Tribunal, without considering the evidence on record, more particularly, Ex.A.1 – FIR, Ex.A.2 – Charge Sheet and also Ex.B.1 copy of the judgment in CC No.587 of 2001 passed by the Judicial Magistrate of First Class, Armoor, has erroneously awarded an amount of Rs.5,58,000/- towards compensation.

8. Though the respondents Corporation disputed the very liability on the ground that the accident was not due to the rash and negligent driving of the driver of the bus, but there is no evidence in support of the said contention. On the other hand, the petitioners filed Ex.A.1 – FIR and Ex.A.2 – Charge Sheet. In both Exs.A1 and A2, it is specifically mentioned that the accident was due to rash and negligent driving of the bus by its driver. It is relevant to note that the police, after completing investigation, filed Ex.A-2 charge sheet stating that the accident was due to the rash and negligent driving of the driver of the bus.

9. On the other hand, the learned counsel for the respondents Corporation referred Ex.B.1 – Judgment in CC No.587 of 2001 passed by the Judicial Magistrate of First Class, Armoor, under which the driver of the bus was acquitted. By referring the said judgment, learned counsel for the respondents' Corporation would contend that the accident was not due to rash and negligent driving of the driver of the bus. It is relevant to

note that in criminal cases, the prosecution has to prove the guilt of the accused beyond reasonable doubt and with probable evidence, whereas, in the claims under Motor Vehicles Act, there is no need to prove the guilt of the accused beyond reasonable doubt. Therefore, Ex.B-1 is of no use for the respondents Corporation in the present case. It is also relevant to note that the Tribunal, on consideration of the entire evidence, gave a specific finding that the accident was due to the rash and negligent driving of the driver of the bus. Therefore, according to this Court, there is no error in the said finding given by the Tribunal.

10. In view of the same, the other issue that falls for consideration by this Court is with regard to quantum.

11. It is the specific case of the petitioners that the deceased used to run Kirana shop, sell vegetables and cultivate lands. He used to earn an amount of Rs.1,28,000/- per annum and used to deposit an amount of Rs.72,000/- per annum in four postal savings accounts under Mahila Pradan Kshatriya Bachat Yojana. In proof of the same, the petitioners filed Exs.A-7, A-8, A-9 and A-10 passbooks. The petitioners have also filed Ex.A-6 date of birth certificate of the deceased and Ex.A-11 licence issued by Grampanchayat, Kammarpally, Ex.A12 Certificate issued by Grampanchayat, Kammarpally dated 05.08.2004, Ex.A13 licence issued by the Panchayat Secretary, Grampanchayat, Kammarpally, dated 17.06.2000.

12. With the said contentions, learned counsel for the petitioners would contend that the Tribunal did not consider the said certificates and

awarded an amount of Rs.5,58,000/- towards compensation, which is very less and not just compensation.

13. On perusal of the impugned judgment, the Tribunal by considering Ex.A-6 birth certificate, considered the age of the deceased as 45 years. There is no contrary evidence disputing the age of the deceased under Ex.A-6. This Court is also of the view that the Tribunal has rightly considered the age of the deceased as 45 years.

14. Coming to the income and monthly earnings of the deceased, the Tribunal considered the monthly earning capacity of the deceased as Rs.4,500/- per month. The Tribunal did not consider Exs.A-7 to A-10 pass books in proper perspective. The Tribunal also did not consider Exs.A-11 to A-14 licences and certificates filed by the petitioners in a proper perspective.

15. Learned counsel for the petitioners relied upon the principle held by the Apex Court in **Sarla Verma v. Delhi Transport Corporation¹**, **National Insurance Company Limited v. Pranay Sethi²** and **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram³**.

16. As per the principle held by the Hon'ble Supreme Court in **Sarla Verma's case (1 supra)**, the multiplier should be '14'. As per the provisions of the Motor Vehicle Act, 1988, more particularly, Sections 163-A and 166, the legal heirs/legal representatives of the deceased are entitled for compensation. In the case on hand, the 1st petitioner is the wife, petitioners 2 to 5 are the children of the deceased. The 5th

¹. (2009) 6 SCC 121

². (2017) 16 SCC 680

³. (2018) 18 SCC 130

petitioner is the married daughter and the 6th petitioner is the son-in-law of the deceased. As held by the Supreme Court in **Smt. Majuri Bera v. The Oriental Insurance Company Ltd.**⁴, the married daughter is not entitled for compensation and therefore, the 5th petitioner is not entitled for compensation and since the 6th petitioner is son-in-law, and hence, the 6th petitioner cannot be treated as legal heir/legal representative of the deceased. Therefore, he is not entitled for any compensation. As per the principle held in **Sarla Verma's** case (1 *supra*), since the deceased is self employed, having 4 dependants, 1/4th of the income has to be deducted towards his personal and living expenses.

17. Despite filing of Exs.A6 to A14, the Tribunal considered an amount of Rs.4,500/- per month as the monthly earnings of the deceased. After making deduction of Rs.1,500/- towards personal expenses of the deceased, the contribution to the family would be Rs.3,000/- per month or Rs.36,000/- per year. The said consideration of the Tribunal is not based on any evidence. The Tribunal also referred the deposition of PW.1, wherein she has stated that the deceased used to run Kirana shop, sell vegetables and cultivate 8 acres of land and that he used to earn Rs.1,50,000/- per year and also used to invest an amount of Rs.72,000/- per year in four postal savings accounts since 5 years prior to the accident. After the death of her husband, she has deposited Rs.6,000/- per month for three months and thereafter, she was unable to deposit the amounts. Though the Tribunal referred the said evidence, it considered an amount of Rs.4,500/- per month towards the income of the deceased.

⁴. 2007(3) ALD 55

Therefore, the said amount of Rs.4,500/-, according to this Court, is not reasonable. The Tribunal by relying upon II Schedule, applied the multiplier '15'. As stated supra, as per the principle held in **Sarla Verma's case (1 supra)**, the multiplier should be '14'.

18. It is also evident from the aforesaid Exs.A-7 to A-10 that the deceased used to deposit an amount of Rs.6,000/- per month in four postal savings accounts since 5 years. Even if that is taken into consideration, the monthly earning capacity of the deceased would be more than the said amount of Rs.6,000/-. Therefore, this Court considered the monthly earnings of the deceased as Rs.6,000/-. Accordingly, when 1/4th is deducted from the monthly earnings of Rs.6,000/-, the monthly contribution of the deceased to the family would work out to Rs.4,500/- (Rs.6,000/- - Rs.1,500/-) and the annual earnings would come to Rs.54,000/- and, therefore, the same is taken into consideration as the loss of dependency to which the appellants are entitled to. When the relevant multiplier '14' is applied to the said annual earnings, it works out to Rs.7,56,000/- (i.e.54,000 x 14). That apart, as per the principle held by the Hon'ble Apex Court in **Pranay Sethi's case (2 supra)**, an addition of 25% of the established income of the deceased should be added towards future prospectus since he is below the age of 50 years and when the same is applied, it works out to Rs.2,26,800/- (25% of 7,56,000) and, therefore, the same is also awarded to the petitioners.

19. Further, as per the principle held by the Hon'ble Supreme Court in **Magma's case (3 supra)**, the petitioners are entitled for an

amount of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards spousal consortium to the 1st petitioner and Rs.40,000/- each to the petitioners 2 to 3 towards parental consortium.

20. Admittedly, the 5th petitioner is the married daughter and the 6th petitioner is the son-in-law of the deceased, hence, they are not entitled for any compensation. As discussed supra, the respondents' Corporation is liable to pay compensation to the petitioners 1 to 4 under the following heads:

i)	Loss of dependency	.. Rs.7,56,000-00
ii)	An addition of 30%	.. Rs.2,26,800-00
iii)	Funeral expenses	.. Rs. 15,000-00
iv)	Loss of estate	.. Rs. 15,000-00
v)	Spousal consortium	.. Rs. 40,000-00
vi)	Parental consortium to children (Rs.40,000/- each to petitioners 2 to 4)	.. Rs.1,20,000-00
	Total compensation	----- ..Rs.11,72,000-00 -----

Thus, the said amount of Rs.11,72,000/- (Rupees Eleven Lakhs Seventy Two thousand only) is awarded as compensation which is just and reasonable with interest at 7.5% per annum on the enhanced amount. This Court is having power to grant just and reasonable compensation to which petitioner Nos.1 to 4 – claimants are entitled as held by the Apex Court in **Ramla v. National Insurance Company Limited**⁵.

20. In the result, the MACMA No.957 of 2006 is allowed and MACMA No.3614 of 2008 is dismissed. The judgment and decree dated 17.10.2005 in O.P. No.148 of 2002 passed by the Motor Accident Claims Tribunal (District Judge), Nizamabad, are modified enhancing the

⁵. (2019) 2 SCC 192

compensation to Rs.11,72,000/- from Rs.5,58,000/- with interest at the rate of 7.5% per annum on the enhanced amount, from the date of petition till realization. However, petitioners 1 to 4 – claimants are directed to pay deficit court fee within a period of one (01) month from the date of receipt of a copy of this judgment. The compensation amount shall be apportioned among the petitioners 1 to 4 - claimants in the same proportion in which original compensation amounts were directed to be apportioned by the Tribunal. As far as loss of consortium amounts are concerned, the respective petitioners 1 to 4 – claimants are alone entitled to receive from out of the above said total compensation. The respondents' Corporation is directed to deposit the above said amount with interest and costs after deducting the amount which was already deposited within one month from the date of receipt of a certified copy of this judgment. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

06.02.2020

KTL

K. LAKSHMAN, J