THE HONOURABLE SRI JUSTICE K.LAKSHMAN

M.A.C.M.A.No.2567 OF 2006

JUDGMENT:

Heard learned counsel for the appellants/claimants and learned Standing Counsel for Insurance Company.

2. Feeling aggrieved by the judgment and decree dated 14.09.2006 in O.P.No.2591 of 2004 passed by the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal), the appellants/claimants, wife, daughters, sons, mother and sister of the deceased respectively, filed the present appeal claiming to grant just compensation.

3. Vide the aforesaid judgment, the Tribunal has awarded an amount of Rs.1,59,500/- in favour of the claimants and against respondents towards compensation with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realisation as against the claim of Rs.10,00,000/-.

4. On consideration of entire record including evidence both oral and documentary, the Tribunal gave a finding that the accident was occurred due to rash and negligent driving of the water tanker bearing No. APL 8114. Admittedly, the insurance company did not file any appeal challenging the said finding and hence, the said finding attained finality.

5. The only question falls for consideration by this Court is with regard to the quantum of compensation.

6. It is the contention of the claimants that the deceased was aged 42 years. In support of the same, the claimants relied on Ex.A.3-postmortem report and the deposition of PW.1. By considering the

same, the Tribunal rightly considered the age of the deceased as 42 years. As per the decision of the Apex Court in **SARALA VERMA AND OTHERS v DELHI TRANSPORT CORPORATION AND ANOTHER[1],** relevant multiplier applicable for the age group of 41 to 45 years is '14' and since the family members are more than 6 in number i.e. 7 in number, 1/5th has to be deducted towards personal expenses of the deceased.

7. With regard to the earning capacity of the deceased, learned counsel for the claimants would contend that the deceased was the owner of the lorry and the same was hired to PW.3. Therefore, the deceased was a businessman at the time of accident and used to earn Rs.7,500/- per month. In support of his contention, the claimants examined PW.3-G.Suryanarayana Reddy and marked Ex.A.6-income certificate. PW.3 is the proprietor of the transport company. By referring Ex.A.6-income certificate and deposition of PW3, learned counsel for the claimants would contend that the Tribunal failed to consider the earning capacity of the deceased as RS.7,500/- per month and gave a finding that the deceased should be treated as a person of no income and also referred Schedule II of the M.V.Act. The Tribunal further held that PW.3 has not placed any material to specify the income of the deceased as Rs.7,500/- and considered the income of the deceased as Rs.15,000/- per annum. The said finding of the Tribunal is not based on any reasons and is contrary to record, more particularly Ex.A.6 and deposition of PW.3. Therefore, this Court considers the income of the deceased as Rs.5,000/- per month, which is reasonable. The claimants are entitled for 25% future prospects since the deceased was 42 years and self employed, as per the decision of the apex Court in **National Insurance**

[1] 2009 ACJ 1298

Company Limited v Pranay Sethi[2]. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram[3],** the 1st claimant is entitled for Rs.40,000/- towards spousal consortium, claimants 2 to 5 are entitled for Rs.40,000/- each towards parental consortium and claimants 6 and 7 are entitled for Rs.40,000/- towards filial consortium and the claimants also entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus in all, under the above said heads, the claimants are entitled for the compensation as mentioned below, which is just and reasonable with interest @ 7.5% per annum from the date of petition till the date of realisation.

1) Loss of dependency (Rs. (Rs.5,000/-x 1/5 x 12 x 14)	Rs.6,72,000/-
2) Spousal consortium	Rs. 40,000/-
3) Parental consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
4) Filial consortium (Rs.40,000/- x 2)	Rs. 80,000/-
5) Loss of estate	Rs. 15,000/-
6) Funeral expenses	Rs. 15,000/-
7) 25% Future prospects (Rs.6,72,000/- x 25%)	Rs. 1,68,000/-
	Rs.11,50,000/-

Both the respondents are jointly and severally liable to pay the compensation. The 2nd respondent shall pay the compensation amount within one month from the date of receipt of a copy of this judgment after deducting the amount if any, deposited earlier. The claimants are entitled to withdraw the said amount.

8. In view of the above, MACMA is allowed-in-part modifying the judgment and decree dated 14.09.2006 in O.P.No.2591 of 2004 passed

[2] 2017(6) 170 (SC)
[3] 2018 Law Suit (SC) 904

by the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad enhancing compensation from Rs.1,59,500/- to Rs.11,50,000/- (Rupees eleven lakhs fifty thousand only) with interest on enhanced compensation @ 7.5% per annum from the date of petition till the date of realisation after deducting the amount if any, deposited earlier. Though the claimants claimed an amount of Rs.10,00,000/-, in view of the above, the claimants are entitled for Rs.11,50,000/-, which is more than the claim, this Court is having power to grant just and reasonable compensation to which the claimants are entitled as held by the Apex Court in **B.Ramla v National Insurance Company Limited[4].** However, the claimants are directed to pay deficit Court Fee within a period of one month from the date of receipt of a copy of this judgment and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimants cannot be permitted to execute for the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stands closed.

K.LAKSHMAN,J

Date 30.01.2020
kvrm

[4] (2019)2 SCC 192