THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. Nos.829 AND 3052 OF 2014

COMMON JUDGMENT:

Feeling aggrieved by the Award and decree dated 05.11.2012 in MVOP No.63 of 2012 passed by the MACT cum X Additional Chief Judge City Civil Court, Hyderabad (for short 'the Tribunal'), the appellants – claimants preferred MACMA No.829 of 2014 and the National Insurance Company preferred MACMA No.3052 of 2014.

2. Since both the appeals arise out of the same accident and the parties are also same, these two appeals are disposed of vide common judgment.

3. Vide aforesaid Award, the Tribunal has awarded an amount of Rs.10,95,000/- with 7.5% interest from the date of petition till the date of realization against the owner and insurer of the offending vehicle as against the claim of Rs.10,00,000/- made by the claimants.

4. Heard the learned counsel for the claimants and the learned counsel for the Insurance Company.

5. Impugning the said award, learned counsel for the Insurance Company would contend that the Tribunal has erroneously awarded an amount of Rs.1,00,000/- towards consortium to the 1st claimant and also Rs.25,000/- towards funeral expenses. According to him, the claimants are not entitled for the said amounts.

6. On the other hand, learned counsel for the claimants would contend that as per the principle held by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram**[1], all the dependants of the deceased are entitled for Rs.40,000/- each towards consortium, but, in fact, the Tribunal has awarded only an amount of Rs.1,00,000/- to the 1st claimant only towards consortium. Therefore, the learned counsel would contend that as per the above said judgment, the wife, children and parents of the deceased are entitled for Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium, respectively.

7. With regard to the monthly earning capacity of the deceased, learned counsel for the claimants would contend that the deceased was aged about 35 years and used to earn Rs.8,000/- per month as salary as driver and Rs.150/- per day as batta in working days, but the Tribunal has considered Rs.5,000/- only towards salary of the deceased. In this context he would rely upon the principle held by the Apex Court in **Parminder Singh v. New India Assurance Co. Ltd.**[2], wherein the Apex Court considered an amount of Rs.10,000/- towards monthly earning capacity of deceased therein, who was a driver, and in view of the same in the present case also, the monthly earning capacity of the deceased should be taken as Rs.10,000/-.

8. As seen from the judgment relied upon by the learned counsel for the claimants, the claimants therein have filed an affidavit issued by

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[1] **(2018) 18 SCC 130**
[2] **2019 (5) ALD 62 (SC)**

the employer of the deceased therein, and basing on the said affidavit, the Apex Court has considered Rs.10,000/- towards monthly earning capacity of the deceased therein. In the present case, the claimants have filed Ex.A7 – salary certificate of the deceased, but they have not examined the employer of the deceased. Admittedly, the claimants have examined PW.2 – cleaner, and he deposed that the deceased used to get an amount of Rs.8,000/- towards monthly salary and Rs.150/- per day towards batta. The Insurance Company has not filed any contra evidence and it failed to elicit anything from the cross-examination of PWs.1 and 2. Therefore, the monthly earning capacity of the deceased can be considered as Rs.8,000/-. The Tribunal has rightly taken the multiplier '16'.

9. Therefore, in view of the above discussion, the claimants are entitled for an amount of Rs.15,36,000/- (Rs.8,000/- x 12 months x 16 multiplier). There are '5' dependants on the deceased and as per the principle held by the Apex Court in **Sarla Verma v. Delhi Transport Corporation**[3], 1/4th of the annual income of the deceased has to be deducted towards his personal and living expenses. On such deduction, the claimants are entitled to an amount of Rs.11,52,000/- (Rs.15,36,000/- minus Rs.3,84,000/- [1/4th of Rs.15,36,000/-]) towards loss of dependency. An addition of 40% of the income of the deceased should be awarded to the claimants as per the principle held by the Apex Court

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[3] (2009) 6 SCC 121

in **National Insurance Company Limited v. Pranay Sethi**[4] for the age groups below 40 years and the same would work out to Rs.4,60,800/- (40% of Rs.11,52,000/-).

10. The Tribunal has awarded Rs.1,00,000/- towards consortium to the 1st claimant only. But, as per the principle held by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram**[5], the 1st claimant – wife, claimants 2 and 3 – children and claimants 4 and 5 – parents of the deceased are entitled for Rs.40,000/- each towards spousal, parental and filial consortium, respectively.

11. The Tribunal has awarded Rs.25,000/- towards funeral expenses. But, as per the principle held by the Apex Court in **Pranay Sethi**'s case, the claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The claimants are further entitled to an amount of Rs.5,000/- towards transportation and Rs.1,000/- towards damage to clothes.

12. Thus, in all, the claimants are entitled to Rs.18,48,800/- (Rupees Eighteen lakhs forty eight thousand and eight hundred only) as compensation under the following heads:

i)	Loss of dependency/contribution to family	.. Rs.11,52,000/-
ii)	Future prospects to an extent of 40%	.. Rs.4,60,800/-
iv)	Funeral expenses	.. Rs.15,000-/
v)	Loss of estate	.. Rs.15,000/-

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4. (2017) 16 SCC 680
5. (2018) 18 SCC 130

vi)	Spousal Consortium	..	Rs.40,000/-
vii)	Parental consortium	..	Rs.80,000/-
viii)	Filial consortium	..	Rs.80,000/-
ix)	Transportation	..	Rs.5,000/-
x)	Damage to clothes	..	Rs.1,000/-

	Total compensation	..	Rs.18,48,800/-
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13. Thus, the said amount of Rs. 18,48,800/- (Rupees Eighteen lakhs forty eight thousand and eight 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 the claimants (appellants in MVOP No.829 of 2014) are entitled as held by the Apex Court in **Ramla v. National Insurance Company Limited**[6] and also the Larger Bench of erstwhile High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in **Adam Indur Muttemma v. Rathod Reddia**[7].

14. In the result, the MACMA No.829 of 2014 is allowed and MACMA No.3052 of 2014 is dismissed. The Award and decree dated 03.11.2012 in MVOP No.63 of 2012 passed by the MACT cum X Additional Chief Judge City Civil Court, Hyderabad, are modified enhancing the compensation to 18,48,800/- (Rupees Eighteen lakhs forty eight thousand and eight hundred only) from Rs.10,95,000/-(Rupees Ten

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[6]. (2019) 2 SCC 192
[7]. (2015) ACJ 2414

lakhs ninety five thousand only) with interest at 7.5% per annum thereon, from the date of petition till realization. The claimants are directed to pay the deficit court fee within one month from the date of receipt of certified copy of this judgment. The compensation amount shall be apportioned among the 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 claimants alone are entitled to receive from out of the above said total compensation.

15. The Insurance Company 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 certified copy of this judgment. However, there shall be no order as to costs. As a sequel, Miscellaneous Applications, if any, pending in the appeals shall stand closed.

K. LAKSHMAN, J

March 02, 2020
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