HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.2570 OF 2006

JUDGMENT:

Assailing the order and decree, dated 18.08.2006, passed in O.P. No.201 of 2003 by the Motor Accidents Claims Tribunal - cum - District Judge, Adilabad (for short 'the Tribunal'), the appellant preferred the present appeal.

2. Vide the aforesaid order, the Tribunal has awarded an amount of Rs.2,07,000/- claimed by the petitioner towards compensation with proportionate costs and interest @ 7.5% per annum thereon against respondents jointly and severally as against the claim of Rs.5,10,000/- made by the claimant for the death of her husband.

3. Heard Mr. Sourabh Agarwal, learned counsel for the appellant and Mr. A.V.K.S. Prasad, learned counsel for respondent No.2 - Insurer.

4. According to the claimant, on 30.09.2002, the deceased - Karinki Tirupathi Rao while proceeding on his Scooter bearing registration No.AP 20C 7496 to Market Yard and when he reached APSRTC bus station, Adilabad, a lorry bearing registration No.MP 23DA 8989 driven by its driver, respondent No.1 herein, in a rash and negligent manner at high speed and dashed him. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The police registered a case against respondent No.1. The deceased was working as a mason and earning an amount of Rs.4,000/- per

month. The claimant, wife of the deceased being dependant on him, filed the claim petition seeking an amount of Rs.5,10,000/- as compensation against respondent No.1, driver-cum-owner of the lorry and respondent No.2, its insurer.

5. Respondent No.1, driver-cum-owner of the lorry, remained *ex parte*. Whereas, respondent No.2 - Insurer filed its counter denying the claim as well as its liability to pay compensation.

6. The Tribunal on the analysis of the entire evidence, both oral and documentary, gave a finding to the effect that the accident was due to rash and negligent driving of respondent No.1. It is relevant to note that respondent No.2 - Insurer has not filed any appeal challenging the above said finding and the said finding attained finality. In view of the same, the only question that falls for consideration by this Court in the present appeal is with regard to quantum of compensation.

7. It is the specific contention of the claimant that he was doing mason work and earning Rs.4,000/- per month, but the Tribunal without considering the same, has awarded a meager compensation and, therefore, prayed for grant of just compensation.

8. On perusal of the record, the appellant filed Ex.A9 - certificate of wages issued by the employer of the deceased and also examined PW.2. Therefore, the Tribunal instead of considering the said amount of Rs.4,000/- as monthly earnings of the deceased, taken the notional

income at Rs.1500/- per month or Rs.18,000/- per annum, which according to this Court, is erroneous. Therefore, the monthly earning capacity of the deceased should be considered as Rs.4,000/- as claimed by the claimant as per Ex.A9 - certificate of wages. The finding of the Tribunal that the appellant has not filed any register of their Union showing the name of the deceased as mason etc. is unsustainable as the deceased was working as a mason and it is not compulsory that he should be member of the Union etc. The Tribunal failed to consider that the procedure under M.V. Act is summary in nature. The Tribunal considered the age of the deceased as 40 years as per Ex.A3 - postmortem examination report and there is no dispute regarding the same, as such, the said finding is confirmed. Therefore, relevant multiplier is '15' as per the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1].

9. In the case on hand, the claimant is the only member as the dependant on the deceased. Thus, 1/3rd has to be deducted from the monthly income of the deceased towards his personal and living expenses and, accordingly, it would come to 2,667/- (1/3rd of Rs.4,000/-) and the annual earnings would come to Rs.32,004/-. When the said annual income of Rs.32,004/- is multiplied with the relevant multiplier '15', it works out to Rs.4,80,060/- and accordingly the same is awarded to the claimant towards loss of dependency or contribution to his family.

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[1]. (2009) 6 SCC 121

10. As already discussed supra, the deceased was 40 years at the time of accident. The deceased was doing mason work and, therefore, he would be come under the category of self-employed. Accordingly, 25% of the income is to be awarded to the claimant as per the principle held by the Apex Court **National Insurance Company Limited v. Pranay Sethi**[2] towards future prospects, i.e., Rs.1,20,015/- (25% of Rs.4,80,060/-).

11. As per the principle held by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram**[3], the claimant is entitled Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

12. Claimant is wife considered to be dependant for awarding spousal consortium and, therefore, she is entitled to Rs.40,000/- under the said head as per the principle held in **Magma General Insurance Company Limited**[3]. Further, an amount of Rs.5,000/- is awarded towards transportation of dead body. Thus, in all, the claimant is entitled to Rs.6,75,075/- (Rupees six lakhs seventy five thousand and seventy five only) as compensation under the following heads:

i)	Loss of dependency	.. Rs. 4,80,060-00
ii)	Future prospects to an extent of 25%	.. Rs. 1,20,025-00
iii)	Funeral expenses	.. Rs. 15,000-00
iv)	Loss of estate	.. Rs. 15,000-00
v)	Spousal consortium	.. Rs. 40,000-00
vi)	Transportation charges	.. Rs. 5,000-00
	Total compensation	.. Rs. 6,75,075-00

2. (2017) 16 SCC 680
3. (2018) 18 SCC 130

13. The Tribunal has awarded the interest at the rate of 7.5% per annum. Since the said rate of interest is reasonable, the same is affirmed and even granted on the enhanced compensation.

14. In the result, the appeal is allowed. Accordingly, the order and decree dated 18.08.2006 in O.P. No.201 of 2003 passed by the Tribunal are modified enhancing the compensation to Rs.6,75,075/- (Rupees six lakhs seventy five thousand and seventy five only) from Rs.2,07,000/-(Rupees two lakhs and seven thousand only) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. The claimant is directed to pay the deficit court fee within one month from the date of receipt of a copy of this judgment. Similarly, Respondent No.2 is directed to deposit the above said amount with interest and costs, after deducting the amount, if any, deposited within one month from the date of receipt of certified copy of this judgment. The claimant is permitted to withdraw the amount after deposit. 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

27th February, 2020
Mgr