

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.1724 of 2013

JUDGMENT:

Heard Sri T. Vishwarupa Chary, learned counsel for the appellants and Sri T. Sanjay K. Singh, learned counsel for the 3rd respondent.

2. This appeal has been filed by the claim petitioners aggrieved and dissatisfied by the quantum of compensation amount granted in the decree and order dated 10.01.2005 in O.P.No.1850 of 2001 on the file of Motor Vehicles Accidents Claims Tribunal-Cum-V Additional Chief Judge, City Civil Court, Hyderabad.

3. The claim petitioner's case in brief is that, on 25.05.2001 while the Mohd. Saber/deceased aged 13 years was proceeding on cycle along with his friend near railway bridge, Zohra bee Dargah, Hyderabad a lorry bearing No.ABT 1174 (for short 'the lorry') driven by its driver in rash and negligent manner struck the cycle, and caused his instantaneous death. Thereupon, the parents of Mohd. Saber/deceased filed petition under Section 166

of the Motor Vehicles Act, 1988 (for short “the M.V.Act”) seeking compensation of Rs.1,00,000/-.

4. The learned Tribunal, considering the material on record held that the accident occurred due to rash and negligent driving of the lorry and awarded Rs.77,500/- with 9% interest per annum by resting the liability against the owner and insurer of the lorry/1st and 2nd respondents.

5. In appeal, appellants/claim petitioners (for short ‘the petitioners’) contended that the tribunal ought to have considered the settled preposition of law in delineating notional income. Further no future prospects are accounted and meager amounts are granted under conventional heads; Thus, prayed for re-assessment.

6. In support, the petitioners placed reliance on the authority between “*Kurvan Ansari Alias Kurvan Ali v. Shyam Kishore Murmu*”¹ and pleaded that for the death of 7 year old boy in the accident the Hon’ble Apex Court had taken notional income at

¹ (2022) 1 SCC 317

Rs.25,000/- per annum and prayed for adopting the same in the instant case.

7. The learned counsel for the 2nd respondent/insurer (for short 'the respondent') pleaded that the tribunal had leniently considered the claim and awarded appropriate amounts. However, fairly submitted that by considering the settled law, just compensation may be awarded.

8. In this position, the point arises for determination is:

“Whether the claimants are entitled for any enhancement of compensation as prayed for? If so, to what amount”?

9. The petitioners pleaded that the deceased/Mohd.Saber was aged about 13 years and he was school going boy by the date of the accident. The entries in Inquest Report under Ex.A-3 and Postmortem examination Report/Ex.A-4 are reflecting the age of the deceased as 13 years. Basing on these entries the age of the deceased can be safely accepted at 13 years. At the age of Mohd. Saber/deceased, no income generating avenue can be presumed. However, having regard to the settled proposition in

the authority Kurvan Ansari (supra) the notional income of the deceased can be presumed as Rs.25,000/- per annum.

10. In *National Insurance Company Ltd. Vs. Pranay Sethi and others*² the Hon'ble Apex Court held that while assessing the compensation for the death future prospects shall be taken into account. Accordingly, considering the age of the deceased 40% of income is added towards future prospects and out of this 50% of the income has to be deducted towards personal living expenditure. Thus, annual contribution of the deceased to the petitioners would be Rs.17,500/-. If this amount is multiplied with the multiplier to the age of the deceased i.e., 15, the sum comes to Rs.2,2,500/- (Rs.17,500x 15). The petitioners are entitled for this amount towards 'Loss of Dependency'.

11. Besides, the petitioners are also entitled for compensation under 'conventional heads' as prescribed in the dictum of *Pranay Sethi* (supra) i.e., Rs.15,000/- for funeral charges and Rs.15,000/- towards loss of estate.

² (2017) 16 SCC 860

12. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation to 'consortium' given in the authority of *Magma General Insurance co. Ltd. vs. Nanu Ram & ors.*³, in the authority between *United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others*⁴ reinforced that the amounts for loss of consortium shall be awarded to the parents for the loss of love and affection and companionship of their children. Correspondingly, the 1st and 2nd petitioners being the parents are entitled to Rs.40,000/- each towards filial consortium.

13. Thus, in total, the petitioners are eligible for the compensation as follows:

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	2,62,500.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
Filial consortium to 1 st and 2 nd petitioners	80,000.00
TOTAL	3,72,500.00

14. The Section 168 of M.V.Act contemplates duty on the Courts to award just compensation to the claimants. In Nagappa

³ (2018) 18 SCC 130

⁴ Civil Appeal No.2705 of 2020, dt.30.06.2020

Vs. Gurudayal Singh⁵ the Hon'ble Apex Court held that in the absence of any bar in the Act, the competent Court is entitled to award higher compensation to the petitioners, if they are entitled for such compensation. For the reasons, the above arrived sum shall be granted to the petitioners.

15. For the aforesaid, the appeal is allowed in the following terms:

(i) The petitioners are awarded Rs.3,72,500/- (Rupees three lakhs seventy two thousand five hundred only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

(ii) the owner and the insurer of the lorry/1st and 2nd respondents are jointly and severally liable to pay the compensation and they are directed to deposit the enhanced amount by setting of the amounts paid, if any, within one month from the date of receipt of a copy of this judgment;

(iii) the apportionment among the petitioners shall be in terms of the tribunal award.

⁵ (2003) 2 SCC 274

(iv) on deposit of the awarded amount, the petitioners are permitted to withdraw entire amount apportioned in their favour.

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

N.TUKARAMJI, J

Date: 21.07.2022
VRKS

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.1724 of 2013

Date: 21.07.2022
VRKS