THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.1561 of 2015

JUDGMENT:

Dissatisfied with the quantum of compensation awarded in the judgment and decree, dated 30.03.2012 passed in O.P.No.1576 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-VI Additional District and Sessions Judge (Fast Track Court), Vikarabad, Ranga Reddy District (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array before the Tribunal.

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- for the death of one P.Ranga Reddy (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 30.11.2007. According to the claimants, on 30.11.2007, the deceased was returning from M.R.F. Factory in an auto bearing No.AP 23 X 5075 and when the auto reached the limits of Sadasivpet Village, one Lorry bearing No.AP 16 TU 5153, being driven by

its driver in a rash and negligent manner, dashed the Trolley Auto bearing No.AP 13 X 1206 and also dashed the auto in which the deceased was travelling and thereafter, the said lorry was turned turtle. As a result, the deceased sustained multiple injuries and died on the spot. According to the claimants, the deceased was 28 years at the time of accident, working as Contract Labour in M.R.F. Factory and was earning Rs.4,500/- per month and therefore, they filed the O.P. claiming compensation of Rs.5,00,000/- against the respondents, who are the previous owner, insurer and the registered owner of the offending vehicle.

4. Before the tribunal, while the owner of the vehicle, respondent No. 1 stood ex parte, the insurance company, respondent No. 2 filed counter denying the manner in which the accident took place, including the age, avocation and income of the deceased. It is specifically contended that the present owner of the offending lorry was not made as party to the petition. It is further contended that the driver of the offending vehicle, lorry, was not having valid driving licence at the time of the accident. It is also stated that the quantum of

compensation claimed is excessive, baseless and prayed to dismiss the petition.

5. Respondent No.3, who was impleaded as per the orders in I.A.No.106 of 2011, dated 27.05.2011, filed counter contending that the driver of the offending vehicle was having valid and subsisting driving licence at the time of the accident. It is also stated that he is the registered owner of the crime lorry and that the offending vehicle was validly insured with respondent No.2 and the policy was in force as on the date of the accident, as such, respondent No.2 alone is liable to pay the compensation.

6. Considering claim, counters and the oral and documentary evidence available on record, the tribunal held that the accident occurred due to the negligent driving of the lorry by its driver and accordingly awarded an amount of Rs.3,96,000/- with interest at 7.5% per annum payable by respondent No.3 only while dismissing the claim against respondent Nos.1 and 2 as there is breach of policy conditions. Dissatisfied with the quantum of compensation

and also exonerating the Insurance Company from its liability, the claimants filed the present appeal.

7. Heard both sides and perused the record.

8. The contention of the learned counsel appearing for the appellants is that the claimants have asserted that the deceased was working as Contract Labour in M.R.F. Factory and earning Rs.4,500/- per month, and in the absence of any rebuttal evidence in relation thereto, the Tribunal ought to have accepted the avocation and the income of the deceased, but erroneously fixed the income of the deceased at Rs.3,000/- per month. It is further contended that the claimant Nos.2 and 3, being the minor children, and claimant No. 4, being mother of the deceased, ought to have been granted parental consortium of Rs.40,000/- each and filial consortium of Rs.40,000/-, respectively, in view of the judgment of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***[1]**.** Further, as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi***

[1] (2018) 18 SCC 130

and others[2], the claimants are entitled to addition of 40% towards future prospects to the established income of the deceased. It is further contended that as per the decision of the Apex Court reported in ***Sarla Verma v. Delhi Transport Corporation***[3], the appropriate multiplier, considering the age of the deceased as 30 years, is '17', but not '16', as was applied by the tribunal. It is further contended that though the driver of the Lorry was having valid driving licence at the time of the accident, the Tribunal erred in exonerating the insurance company from the liability to pay the compensation.

9. On the other hand, the learned Standing Counsel for the respondent No.2, Insurance company, has contended that in the absence of producing any evidence, either oral or documentary, to prove the avocation of the deceased as Contract Labour and his earnings, the Tribunal has rightly assessed the income of the deceased Rs.3,000/- per month and rightly awarded the just and reasonable compensation which needs no interference by this Court. It is also

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[2] 2017 ACJ 2700

[3] 2009 ACJ 1298 (SC)

contended that the driver of the Lorry was not having valid driving licence at the time of the accident and as there was breach of terms and conditions of the Policy, the Tribunal has rightly exonerating the Insurance Company from its liability.

10. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by either of the respondents.

11. As regards the quantum of compensation, though the claimants claimed that the deceased was a Contract Labour and earning Rs.4,500/- per month, since the claimants did not substantiate the claim as such by adducing any evidence, the Tribunal has taken the income of the deceased at Rs.3,000/- per month. However, considering the age of the deceased and the prevailing minimum wages at the relevant point of time, this Court is inclined to fix the monthly income of the deceased at Rs.4,500/- per month as claimed by the claimants. Considering the fact that the age of the deceased at the time of accident was below 40 years, the claimants are entitled to addition of 40% towards future prospects to the established income, as per the decision of the Hon'ble

Supreme Court in ***Pranay Sethi*** (supra). Therefore, the future monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1800/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following the decision in ***Sarla Verma*** (supra) since there are four dependents. After deducting 1/4th therefrom towards his personal and living expenses, the contribution of income by the deceased to the family comes to Rs.4,725/- per month. Since the age of the deceased was 30 years as held by the Tribunal, the appropriate multiplier is '17' as per the guidelines laid down by the Apex Court in ***Sarla Verma*** (supra). Adopting multiplier '17', the total loss of dependency would be Rs.4,725/- x 12 x 17 = Rs.9,63,900/-. That apart, the claimants are entitled to Rs.77,000/- under the conventional heads as per the decision of the Apex Court in **Pranay Sethi** (supra). Further, since the claimant Nos. 2 and 3 are minor children of the deceased, this Court is inclined to award a sum of Rs.40,000/- each to claimant Nos. 2 and 3 under the head of parental consortium as per the decision of the Apex Court in ***Nanu Ram @ Chuhru Ram*** (supra). Thus, in all, the claimants are entitled to Rs.11,20,900/-.

12. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.5,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

13. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[4] and ***Nagappa Vs. Gurudayal Singh***[5] the claimants are entitled to get just compensation even if it is more than the amount what was claimed by the claimants.

14. Coming to the aspect of liability of payment of compensation, admittedly, as seen from Ex.B3, Driving Licence, the driver of the Lorry was having non-transport licence valid upto 18.08.2017 and transport licence valid upto 20.10.2007. Ex.B3 further discloses that the said

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[4] (2011) 10 SCC 756
[5] 2003 ACJ 12 (SC)

licence was renewed on 04.12.2007. Since the accident occurred on 30.11.2007 and the licence was renewed on 04.12.2007, there is breach of terms and conditions of the Insurance Policy as rightly held by the Tribunal. But the fact remains that by the time of accident, the offending vehicle was insured with the 2nd respondent and Ex.B.2 policy was very much in force. In the case of third party risks, as per the decision in ***National Insurance Company Ltd. V. Swaran Singh and others***[6], the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. In the said decision, the Apex Court considered the doctrine of "*pay and recover*" examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in the case of **Shamanna v. The Divisional Manager, the Oriental Insurance**

[6] (2004) 3 SCC 297

Company Limited and Others[7], following its earlier decision in **Swaran Singh** (supra), reiterated that "*even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.*" In view of the above, the Insurance Company is directed to pay the compensation amount at the first instance and then recover the same from the registered owner of the vehicle i.e., respondent No.3.

15. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is enhanced from Rs.3,96,000/- to Rs.11,20,900/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of petition till the date of realization. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the major claimants are entitled to withdraw their respective share amounts without furnishing any security. However, the

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[7] 2018 ACJ 2163

claimants are directed to deposit the deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

27.12.2022
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.76 of 2014

DATE:76 of 2014

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M.A.C.M.A.No.1561 of 2015

DATE: -12-2022