THE HON'BLE JUSTICE G. SRI DEVI

AND

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

M.A.C.M.A.Nos.1609 of 2013 and M.A.C.M.A.(SR) No.45361 of 2013

COMMON JUDGMENT: (Per Hon'ble Justice G. Sridevi)

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1609 of 2013 filed by Bharathi Axa General Insurance Company Limited and M.A.C.M.A. (SR) No.45361 of 2013 filed by the petitioners/claimants seeking enhancement of the compensation, are directed against the very same order and decree, dated 14.05.2013 passed in O.P.No.168 of 2012 on the file of the Motor Accident Claims Tribunal-cum-Principal District and Sessions Judge, Medak at Sangareddy (for short "the Tribunal").

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

3. Brief facts of the case are that the petitioners, who are the wife, children and mother of one Venkatesham (hereinafter referred to as "the deceased") filed a petition against the respondents claiming compensation of Rs.96,00,000/- for the death of the deceased, who died in a motor vehicle accident. It is stated that on 24.10.2011 the deceased was proceeding to B.H.E.L. factory on his Hero Honda motor cycle bearing No.AP 23 AA 8853 and when he reached near B.H.E.L. guest house, a Car bearing No.AP 31 U 6228 driven by its driver in a rash and negligent manner at high speed and dashed the motor cycle, due to which the deceased fell down

and sustained head injury. Immediately, the deceased was shifted to B.H.E.L. Hospital and later to Apollo hospital, where he was declared dead. It is also stated that prior to his death, the deceased was working as Technician in B.H.E.L. and drawing a salary of Rs.98,150/- per month. Due to sudden demise of the deceased, the petitioners lost their source of income. Since the accident occurred due to the rash and negligent driving of the driver of the Car bearing No.AP 31 U 6228, the petitioners filed the aforesaid O.P against the respondents. Respondent No.1 is the owner and respondent No.3 is the insurer of the said Car are jointly and severally liable to pay the compensation.

4. Before the Tribunal, respondent No.1 remained *ex parte.*

5. Respondent No.2 filed counter denying the averments made in the claim-petition including the manner in which the accident occurred, age, income and avocation of the deceased. It is specifically contended that there was no negligence on the part of the driver of the offending vehicle and the accident occurred only due to the negligence of the deceased only. It is also contended that the amount claimed is highly excessive and prayed to dismiss the claim-petition.

6. After considering the oral and documentary evidence available on record, the Tribunal held that the accident happened due to the rash and negligent driving of the driver of the offending vehicle-Car and accordingly awarded an amount of Rs.70,06,500/- with interest @ 8% per annum from the date of petition till the date of realization to be paid by the respondents 1 and 2 jointly and severally. Challenging the same, the

present appeals came to be filed by the Insurance company and the petitioners respectively.

7. Heard both sides and perused the record.

8. The learned Standing Counsel for the insurance company would submit that the Tribunal erred in adding future prospects at 35% instead of 15% as the deceased was aged about 52 years at the time of the accident. It is lastly contended that the Tribunal has awarded interest at 8% which is on higher side and it should be reduced to 6%.

9. On the other hand, learned counsel for the petitioners has submitted that though the petitioners proved that the deceased was earning Rs.98,150/- per month by working as a Technician A7 grade in B.H.E.L., a Central Government Undertaking Unit, the Tribunal erroneously fixed the monthly income of the deceased at Rs.52,236.00. It is further submitted that as per the principles laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others*[1], the petitioners are also entitled to Rs.77,000/- under conventional heads. However, the learned counsel fairly admitted that the future prospects at 15% should have been added to the established income of the deceased.

10. A perusal of the impugned order would show that the Tribunal has framed Issue No.1 as to whether the accident took place on account of rash and negligent driving by the driver of the Car, to which the Tribunal after

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[1] 2017 ACJ 2700

considering the oral and documentary evidence adduced by both the parties, has categorically observed that the accident took place due to rash and negligent driving of the driver of the Car. Therefore, we see no reason to interfere with the finding of the Tribunal that the accident was occurred due to the rash and negligent driving of the driver of the Car.

11. Insofar as the quantum of compensation is concerned, R.W.1 in his evidence deposed that as per Ex.A11-salary certificate the gross salary of the deceased for the month of September, 2011 was Rs.72,454/-. P.W.3 also stated that the said gross salary includes Rs.18,413/- towards overtime allowance. Therefore, duly deducting the overtime allowance and also professional tax from the gross salary, the actual monthly salary would be Rs.53,841.00. Therefore, this Court is inclined to fix the income of the deceased at Rs.53,841.00 per month. Apart from the same, as the deceased was a Government employee and aged about 52 years, the petitioners are entitled to addition of 15% towards future prospects, as per the decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra) instead of 35%, as erroneously added by the Tribunal. Therefore, monthly income of the deceased comes to Rs.61,917/- (Rs.53,841/- + Rs.8,076/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following *Sarla Verma v. Delhi Transport Corporation*[2] as the dependents are four in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.46,212/- per month. Since the deceased was aged about 52 years, in

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[2] 2009 ACJ 1298 (SC)

view the judgment of the Apex Court in *Sarla Verma* (supra) the suitable multiplier would be '11'. Applying multiplier '11', the total loss of dependency would be Rs.46,212/- x 12 x 11 = Rs.60,99,984/-. Apart from that, in view of the law laid down by the Apex Court in *Pranay Sethi's case* (supra) the claimants are entitled to only Rs.77,000/- towards loss of consortium, loss of estate and funeral expenses. Thus, in all the petitioners are entitled to Rs.61,76,984/-. Therefore, the amount awarded by the Tribunal is hereby reduced from Rs.70,06,500/- to Rs.61,76,984/-.

12. Insofar as the interest awarded by the Tribunal is concerned, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[3], the petitioners are entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization, but not 8% as awarded by the Tribunal.

13. Accordingly, the appeal filed by the Insurance Company is allowed in part and the appeal filed by the petitioners is dismissed. The amount awarded by the Tribunal is hereby reduced from Rs.70,06,500/- to Rs.61,76,984/- together with interest at 7.5% per annum from the date of petition till the date of realization. The reduced amount shall be apportioned in the manner as ordered by the Tribunal. The respondents are directed to deposit the entire compensation amount within two months from the date of receipt of a copy of this judgment. On such deposit, the

[3] 2013 ACJ 1403 = 2013 (4) ALT 35

major claimants are permitted to withdraw their share amount without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

G. SRI DEVI, J

SMT. M.G.PRIYADARSINI, J

13.09.2022
Tsr/gkv