HONOURABLE SRI JUSTICE N. TUKARAMJI

MACMA.No.1143 of 2013

JUDGMENT:

Heard the learned counsel for the appellants Sri Kasireddy Jagathpal Reddy and learned counsel for 2nd respondent Sri N.J.Sunil Kumar.

2. Aggrieved by the quantum of compensation awarded, the claim petitioners preferred this appeal against the decree and awarded dated 07.01.2013 in M.V.O.P.No.637 of 2011 passed by the Chairman, Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad.

3. The parents, brothers and sisters of Ahmed Noor Khan/deceased, who died in the vehicular accident dated 13.12.2010, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V.Act'), seeking compensation of Rs.10,00,000/-.

4. It is the case of appellants/petitioners (hereinafter 'the petitioners') that on 13.12.2010, while the deceased along with his friend Mohd.Wasi were proceeding on a motor cycle bearing

registration No.AP28AA 8413 (for short 'the motor cycle') and near RCI Gate, Srisailam Highway, one lorry bearing registration No.AP11T 9930 (for short 'the lorry') driven by its driver in a rash and negligent manner, dashed the motor cycle, as a result the riders slumped and sustained severe injuries. Thereafter, while undergoing treatment, Ahmed Noor Khan/deceased succumbed to injuries.

5. The Tribunal, after considering the material placed on record, recorded the finding that the accident had occurred due to the negligent driving of the lorry and awarded Rs.4,83,000/- with interest at 6% per annum against the owner and insurer of the lorry/1st and 2nd respondents.

6. In the appeal, the learned counsel for the claim petitioners would contend that in spite of evidence of the employer and the documents showing salary of the deceased/Exs.A7 and A8, the Tribunal erroneously fixed the notional income at Rs.4,500/-. Further, the future prospects were not taken into account and the amounts granted under conventional heads are meager. Thus, prayed for reassessment and to award just compensation.

7. The learned counsel for the 2nd respondent/insurer (for short 'the respondent') pleaded that though the employer was examined, in the cross-examination, it is elicited that no document has been filed to show the existence of company and to prove the salary of the deceased, therefore, the Tribunal had rightly discredited the evidence and notionally fixed the monthly income. Further, the other aspects in granting compensation were leniently considered. Thus, there is no justifiable ground to interfere with the award.

8. In these rival stances, the point arises for determination is:

Whether the compensation amount awarded by the Tribunal is just and proper ?

9. The petitioners pleaded that Ahmed Noor Khan /deceased was aged about 22 years and was earning Rs.8,000/- per month by working as Maintenance Supervisor in a private firm i.e., M/s. Zahvi Limited and also as private tutor. To prove the age, no specific document is filed. However, having regard to the entries in inquest report/Ex.A3 and Post Mortem Examination report/Ex.A5, the age of the deceased can be deduced at 22 years by the relevant date.

10. In regard to the occupation and income of the deceased, the petitioners' stance is that the deceased was working as Maintenance Supervisor in M/s. Zahvi Limited and also as private tutor and used to earn Rs.8,000/- per month. To substantiate, the petitioners got examined one Viquar Hussain/P.W.3. He deposed that he is working as Managing Director of M/s. Zahvi Man Power Solutions Private Limited and the deceased used to work in his company as Maintenance Supervisor since two years and he paid Rs.6,000/- as salary and issue Ex.A8/ letter. However, as pointed out by the learned counsel for the respondent, it is elicited in cross examination that no document had been filed to show the existence of the company and that the deceased had worked as maintenance supervisor and no record like appointment letter, salary disbursement register were filed. Further, the P.W.3 admitted that he does not know the educational qualification and no tax returns of their company were filed to show that salary was paid to the deceased.

11. Further, to prove the income of the deceased as tutor, the petitioners filed Ex.A7/certificate said to have been issued by the Masjid e-Boghdadi Tech, wherein, it is mentioned that Ahmed Noor Khan/deceased had worked was working as part time Arabic Teacher

in their Madarsa Iqra since last two years and was earning Rs.1,500/- per month and as per their records, the deceased had qualification of Hifz course in Urdu.

12. The Tribunal by considering the aspects elicited in the cross examination of P.W.3 and the fact that salary certificate/Ex.A7 was not properly proved and the entries in the investigating agency records shows the occupation of the deceased as private teacher, fixed the monthly income at Rs.4,500/-. However, having regard to the fact that the police record is indicating the occupation of the deceased as private teacher and though the material placed on record to prove the occupation of supervisor is not convincing, the recorded occupation is indicating the qualification and capabilities of the deceased, instead of daily wage of manual labour, considering the notional daily income at Rs.200/- and monthly income at Rs.6,000/- is found appropriate.

13. The Hon'ble Apex Court in the dictum in ***National Insurance Company Ltd. vs. Pranay Sethi and others***[1], held that future prospects of self employed shall also be included while assessing the compensation in the cases of death. Thus, considering the age of the deceased, 40% of the income has to be added towards future

[1] (2017) 16 SCC 860

prospects. Admittedly, the deceased was a bachelor. Though the petitioners claimed dependency, considering the fact that they are siblings and their age and the responsibility of the 1st petitioner as father to maintain them and by relying on the directives in **Sarla Verma & others v. Delhi Transport Corporation and another**[2], 50% has to be deducted towards personal expenditure. Therefore, the annual contribution of the deceased to the petitioners would be Rs.50,400/-. If this amount is multiplied with the relevant multiplier applicable to the age of the deceased, the sum works out to Rs.9,07,200/- (Rs.50,400 x 18). The petitioners are entitled to this amount towards 'loss of dependency'.

14. In addition, the petitioners are also entitled for compensation under the conventional heads, viz., Rs.15,000/- towards Loss of estate and Rs.15,000/- towards funeral charges. 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***

---

[2] (2009) 6 SCC 121
[3] (2018) 18 SCC 130

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 grown up children. Accordingly, the 1st petitioner is entitled for filial consortium at Rs.40,000/-.

15. Thus, in total, the petitioners are eligible for the compensation as hereunder :

DESCRIPTION	**AMOUNT (Rs.)**
Loss of Dependency	9,07,200.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
Filial consortium	40,000.00
TOTAL	**9,77,200.00**

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

(i) the respondents are jointly and severally liable to pay Rs.9,77,200/- (Rupees nine lakhs, seventy seven thousand, two hundred only) with interest @ 7.5% per annum with costs, from the date of petition till date of realization;

ii) the respondents are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment;

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

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

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

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

____
N.TUKARAMJI, J

Date: 23.09.2022
Shr