

HON'BLE SRI JUSTICE PULLA KARTHIK

MACMA.No.641 of 2020

ORDER:

1. This Appeal is filed by the claimants aggrieved by the Order and Decree passed in M.V.O.P. No. 2984 of 2013 dated 24-01-2019 on the file of Motor Accident Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court, at Hyderabad. Wherein the Tribunal had passed an award of Rs.9,62,200/- towards compensation as against the claim of Rs.10,00,000/- on account of death of N.Jangaiah in a motor vehicle accident that occurred on 27.03.2013.

2. The case of the Appellants in brief:

Appellant No.1 is the wife, appellant Nos.2 to 4 are children and petitioner Nos.5 and 6 are parents of N. Jangaiah, who died in a motor vehicle accident that took place on 27.03.2013 at 14.00 hours while the said N. Jangaiah sat in front of hotel Krishna at Maheshwaram, at

that time one lorry bearing No. AP-27-T-5805 coming from Gangaram towards Harshadguda road and its driver drove the said lorry at high speed in a rash and negligent manner and dashed him. As a result, he sustained grievous injuries and died on the spot and his body was shifted to Government Hospital for postmortem. The police of Maheshwaram registered a case in crime No. 52/2013 under Section 304-A IPC against the driver of said lorry.

3. It is pleaded that the deceased was hale and healthy prior to accident and as on the date of accident, he was aged 29 years and used to attend labour work and thereby used to earn Rs. 9,000/- per month. It is further pleaded that he used to contribute his entire earnings to maintain his family i.e. the petitioners herein. Due to sudden death of deceased, petitioners lost their livelihood and it has become very difficult for petitioner No. 1 to maintain her three children and two old aged in-laws without financial

support. Petitioner Nos.1 to 4 also lost love and affection of the deceased at their very young age and suffering mental agony.

4. Respondent No. 1 remained ex parte before the Tribunal.

5. The respondent No.2 – Insurance Company filed counter denying all material averments mentioned therein.

6. Basing on the above pleadings, the following issues were settled for trial by the Tribunal :

i.“Whether in the pleaded accident deceased N. Jangaiah died due to rash and negligent driving of the driver of lorry bearing No. AP-27-T-5850?

ii.Whether the petitioners are entitled to compensation? If so, how much and from whom?

iii.To what relief?”

7. On behalf of the appellant/petitioner, PW1 and PW2 were examined and Ex.A1 to A10 were marked, on behalf of respondent No.2, RW1 was examined and Ex.B1 insurance policy was marked.

8. On considering the evidence and material on record, the Tribunal was pleased to allow the petition in part and awarded compensation of Rs.9,62,200/-with proportionate costs and interest thereon at the rate of 6% per annum from the date of petition till realisation.

1. Loss of dependency	Rs.9,07,200/-
($4500 + 4500 \times 40 / 100 =$ $6,300 / 4 = 4,725 \times 12 \times 16$)	
2. Loss of consortium	Rs.40,000/-
3. Funeral expenses	Rs.15,000/-
Total	Rs.9,62,200/-

9. Heard, both sides and perused the record.

10. The appellant contends that the Tribunal erred in taking the monthly income of the deceased at Rs.4,500/- instead of Rs.9,000/-. The Tribunal ought to have deducted $1/6^{\text{th}}$ instead of deducting $1/4^{\text{th}}$ from the total

earnings of the deceased towards personal expenses. It is further contended that the Tribunal had erred in granting interest at the rate of 6% per annum which is contrary to law.

11. The respondent contends that the Tribunal had rightly passed an award on the basis of the evidence and material on record. It is further contended that there is no error in order passed by the learned Tribunal and requested to dismiss the appeal.

12. This Court has taken note of the submissions made by the respective parties.

13. According to PW1, her husband was aged about 35 years as on the date of accident and was doing labour work and used to earn Rs.9,000/- per month. But the petitioners have not filed any document in order to prove the monthly income of the deceased. This court holds that considering the facts and the circumstances of the

case, the Tribunal had justified in taking Rs.4,500/- per month as the income of the deceased by the date of his death. As per the record, the age of the deceased was 35 years as on the date of death. Hence the multiplier applicable is 16 and 40% of the income is to be added towards future prospects and further $1/5^{\text{th}}$ of the income is to be deducted towards personal expenses of the deceased, as there are six dependents to the deceased. Therefore the loss of dependency comes to Rs.9,67,680/- $(4,500 + 4,500 \times 40\% = 6,300 / 5 = 1,260 \times 12 \times 16)$.

14. As per law laid down by Apex Court in MAGMA's Case, the appellant No.1 is entitled a sum of Rs.40,000/- towards loss of consortium as awarded by the Tribunal and further appellants No.2,3,4 are entitled Rs.40,000/- each towards parental consortium and appellant No.5 and 6 are entitled to Rs.40,000/- each towards filial consortium. This court further holds that the appellants are entitled to a sum of Rs.15,000/- towards loss of

estate and interest @ 6% awarded by Tribunal is modified to 7.5% per annum and the remaining award passed by the Tribunal is confirmed and the total award of compensation is as under:

1. Loss of dependency	Rs.9,67,680/-
($4500 + 4500 \times 40 / 100 =$ $6,300 / 5 = 5,040 \times 12 \times 16$)	
2. Loss of consortium	Rs.2,40,000/-
($40,000 \times 6$)	
3. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-
 Total	 Rs.12,37,680/-

Accordingly, the compensation amount awarded by the learned Tribunal is hereby enhanced from Rs.9,62,200/- to Rs.12,37,680/-. The enhanced amount will carry interest at 7.5% p.a. from the date of petition till the date of payment against both the respondents jointly and severally subject to the appellants paying the court fee on the enhanced amount.

15. With the above modifications, the appeal is disposed of. There shall be no order as to costs.

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

PULLA KARTHIK, J

Dt: 26-09-2022

vns/Bw

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MACMA.No.641 of 2020

September 26, 2022

VNS/Bw