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

M.A.C.M.A. Nos.3195 of 2011 and 1523 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.3195 of 2011 filed by the New India Assurance Company Limited and M.A.C.M.A.No.1523 of 2015 filed by the claimants, seeking enhancement of the compensation, are directed against the very same award and decree, dated 02.04.2007 passed in O.P.No.2833 of 2005 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad (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 claimants, who are the parents, brother and sister of Mr.Zakir Hussain (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.6,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 28.10.2005. It is stated that on 28.10.2005 while the deceased was proceeding on motorcycle from

Barkatpura Petrol Pump to the tourist hotel side. At that time, one oil tanker bearing No.AP 28 T 2455, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed and hit the back side of the motorcycle and dragged the motorcycle for some distance, as a result of which, the deceased fell down on the road side and sustained head injury and other multiple injuries all over the body. Immediately, the deceased was shifted to Osmania General Hospital, wherein, the Doctors declared him as dead. The Police, Kachiguda Police Station, registered a case in Crime No.307 of 2005 for the offence punishable under Section 304-A of I.P.C. against the driver of the Oil Tanker and took up the investigation. It is stated that prior to the accident, the deceased was hale and healthy and was working as hotel management apprentice in Hotel Grand Kakatiya and was drawing a salary of Rs.2,750/-, besides food, other allowances. Due to sudden demise of the deceased, the claimants lost their source of income, love and affection, therefore, they laid the claim against the respondents.

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

5. Respondent No.2, filed counter denying all the averments in the claim-petition, including the manner in which the accident took place, age, avocation and income of the deceased. It is specifically contended that there was no negligence on the part of the driver of the Oil Tanker. It is also contended that compensation claimed is excessive and sought for dismissal of the claim-petition.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the pleaded accident occurred on 28.10.2005 due to rash and negligent driving of oil tanker bearing No. AP 28 T 2455 by its driver, causing death of deceased?
2) Whether the petitioners are entitled to any compensation and if so, at what quantum and what is the liability of the respondents?
3) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A4 and Ex.X1 were marked.

On behalf of the respondents, except marking Ex.B1, no oral evidence was adduced.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Oil Tanker vehicle and accordingly awarded an amount of Rs.6,00,000/- with interest @ 7.5 % per annum from the date of petition till the date of realization to be paid by the respondents. Challenging the same, the Insurance Company as well as the claimants have filed the present appeals, respectively.

9. Heard both sides and perused the material available on record.

10. It is contended by the learned Counsel for the claimants that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1]**,** the claimants are also entitled to the future prospects and also Rs.33,000/- under conventional heads.

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[1] 2017 ACJ 2700

11. Learned Standing Counsel for the 2rd respondent has submitted that the issue with regard to the future prospects has been considered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra) and as per that judgment, the claimants are entitled 40% amount towards future prospects. It is further submitted that though the deceased was a bachelor the Tribunal erred in deducting 1/3rd amount towards personal expenses of the deceased instead of 50%. Therefore, prayed to reduce the compensation.

12. A perusal of the impugned award discloses that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the offending vehicle by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the offending vehicle and has answered in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with

the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of offending vehicle.

13. Insofar as the quantum of compensation is concerned, considering the age and avocation of the deceased, the Tribunal has rightly taken the income of the deceased at Rs.5,000/- per month. Since the deceased was aged about 21 years, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-). Admittedly, the deceased was bachelor and 50% of his income is to be deducted towards his personal and living expenses as rightly contended by the learned Standing Counsel appearing for the Insurance company. Therefore, after deducting 50% towards personal expenses of the deceased, the contribution of the deceased to the family comes to Rs.3,500/- per month. As the age of the deceased was 21 years at the time of the accident, the appropriate multiplier

is '18' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation and another***[2]. Adopting multiplier 18, his total loss of earnings comes to Rs.3,500/- x 12 x 18 = Rs.7,56,000/-. The claimants are also entitled to Rs.33,000/- towards loss of estate and funeral expenses, as per **Pranay Sethi**'s case (supra). Thus, in all the claimants are entitled to Rs.7,89,000/-.

14. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.6,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

15. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3] and ***Nagappa Vs. Gurudayal Singh***[4] the claimants are entitled to get more amount than what has been claimed.

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[2] (2009) 6 SCC 121
[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)

16. Accordingly, the M.A.C.M.A.No.3195 of 2011 filed by the Insurance Company is disposed of and M.A.C.M.A.No.1523 of 2015 filed by the claimants is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.6,00,000/- to Rs.7,89,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. The 2nd respondent is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment. However, the claimants are directed to pay Deficit Court Fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

14.10.2022
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