THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

MACMA. No. 1959 of 2016

and

Cross Objections (SR) 33312 of 2016

COMMON JUDGMENT

This Appeal is filed by the Insurance Company and the cross objection is filed by the Claimants against the award of the Court of Motor Accident Claims Tribunal-Cum IX Additional Chief Judge, City Civil Court, Hyderabad in OP.No.2142 of 2011 dated 09.02.2016.

2. Brief facts leading to the filing of the above appeal are that in the motor vehicle accident that occurred on 15.05.2011 at about 8.00 p.m, opposite R.T.A Office, Tirumalgherry, Kharkana Main road, Hyderabad, the petitioner along with his wife i.e., deceased A.Rani as his pillion rider was proceeding from Tirumalgherry side towards Musheerabad on his Kinetic Honda Bearing No. AP-10-J-1205 when the private bus Bearing No.KA-14-A-4786 came from behind and dashed against the Kinetic Honda of the petitioner and due to the sudden impact, both the petitioner and his wife fell down from the Kinetic Honda and the bus ran over the wife of the petitioner, who died on the spot. A case in Crime No.84 of

2011 under Section 304-A of IPC was booked against the driver of the crime vehicle. The petitioner therefore, filed claim petition before the Tribunal seeking the compensation of Rs.15,00,000/- for the death of his wife in the motor vehicle accident. The owner of the vehicle was made as opposite party respondent No.1 and the Insurance Company was made as respondent No.2.

3. It was stated that the deceased was running a school in the name and style of St. Francis Educational Society, Opposite IDPL Colony, Sumithranagar Colony, Balangar, Hyderabad and she was the sole correspondent of the said school and she used to get net profit of Rs.25,000/- per month and used to contribute her total earnings for the maintenance of the petitioner and his family.

4. It is submitted that the deceased was very intelligent, hard working and sincere to her duties and the school was very famous in the area and it was registered under the Andhra Pradesh Societies Registration Act, 2001 before the Registrar of Societies, Ranga Reddy District vide Registration No.1046 of 2005 dated 23.06.2005 and due to her death, there is no other person to look after the school which would have otherwise continued

running for at least another 15 to 20 years. It was submitted that the deceased was the only earning member in the family and due to her death, the entire family is suffering. The respondent Insurance Company however denied the allegations about the age and income of the deceased, the reason for injuries sustained by the petitioner as alleged in the petition. However, the insurance coverage of the bus was admitted. The Tribunal held that the accident has occurred only due to the rash and negligent driving of the driver of the crime vehicle, i.e., the bus and therefore, the death of the deceased is due to the said accident. The Tribunal adopted the monthly income of the deceased at Rs.25,000/- and also awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. The Tribunal applied the multiplier of 11 by taking the age of the deceased as 55 years. However, it did not allow any compensation towards loss of future prospects.

5. The Tribunal has deducted 50% of the income towards personal expenses and accordingly granted a compensation of Rs.17,75,000/-. Against the said award, both the Insurance Company as well as the claimant have filed appeal and cross objection respectively before this Court.

6. The Insurance Company has taken the ground that the Tribunal has erred in taking the monthly income of the deceased at Rs.25,000/- without any basis and further that there was no proof that school was closed due to the death of the deceased. Therefore, according to the Insurance Company, the Tribunal ought to have taken only notional income. It is further submitted that the Tribunal has failed to see that the husband of the deceased was not dependant on the deceased and therefore there was no dependency of the husband on the income of the deceased. The company is also challenging the multiplier of 11 adopted for the person aged 55 years.

7. Learned counsel for the claimant, on the other hand, submitted that the Tribunal ought to have granted higher compensation for the death of the deceased. It is submitted that the Tribunal has wrongly deducted 50% towards personal expenses of the deceased and wrongly taken contribution to the Cross Objector on the lower side and thus granted less compensation. It is also prayed that compensation towards loss of future prospects also ought to have been granted by the Tribunal and further that the Tribunal has taken the age of the deceased on the higher side and multiplier on the lower side and thus resulted in lesser compensation

being awarded to the claimant. Therefore, it is prayed that the compensation has to be enhanced suitably.

8. Having regard to the rival contentions and the material on record, it is noticed that there is no dispute about the age of the deceased being 55 years at the time of the accident. There is also no dispute about her establishing and running a school and earning a monthly income of Rs.25,000/- which has been accepted by the Tribunal. Therefore, this Court finds no reason to interfere with the decision of the Tribunal in adopting the monthly income of the deceased at Rs.25,000/-. As regards the necessity of the dependency of the husband on the income of the deceased for grant of compensation for her death is concerned, this Court is not in agreement with this argument of the Insurance Company. The compensation is being awarded for the loss of life and not to provide support to the dependant. Therefore, this argument of the Insurance Company is rejected. Further, as regards the spousal consortium, it is noticed the tribunal has granted Rs.1,00,000/- towards loss of consortium as against 40,000+10% enhancement thereon as has been directed by the Apex Court in the case of **National Insurance Company Ltd v. Pramay**

Sethi and others[1] towards spousal consortium. Therefore, the loss of consortium awarded by the Tribunal has to be reduced accordingly. The other conventional expenses which have been granted by the Tribunal are also suitably increased as per the judgment of the Apex Court in the case of **National Insurance Company Ltd v. Pramay Sethi and others**[2] (1 supra). The petitioner is also eligible for compensation towards loss of future prospects @10%. However, the 1/3rd of the income of the deceased shall be reduced towards her personal expenditure. Therefore, the compensation by the Tribunal is modified as under.

9. In the light of the above mentioned discussion, the claimant is entitled to the following amounts:

Head	**Compensation awarded**
(1) Income (25,000 x 12)	Rs.3,00,000 per annum
(2) Future prospects @ 10%	Rs.30,000 per annum
(3) Deduction towards Personal expenses	Rs.1,10,000 i.e. 1/3rd of 3,30,000

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[1] (2017) 16 SCC 680
[2] (2017) 16 SCC 680

(4) Total income	Rs.2,20,000 i.e. 2/3rd of 3,30,000
(5) Multiplier	11
(6) Loss of future income	Rs.24,20,000
(7) Funeral expenses	Rs.16,500(Rs.15,000+10% thereof)
(8) Loss of estate	Rs.16,500(Rs.15,000+10% thereof)
(9) Loss of spousal consortium	Rs.44,000(40,000+10% thereof)
Total compensation awarded	Rs.24,97,000/- along with interest @7.5% per annum from the date of filing of the claim petition till payment.

10. In the result, the award dated 09.02.2016 in O.P.No.2142 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge, City Civil Court, Hyderabad, is modified by awarding a total compensation of Rs.24,97,000/- (Rupees twenty four lakhs and ninety seven thousand only) with costs and interest @ 7.5% per annum thereon from the date of the claim petition till the date of realisation against the respondents 1 and 2 jointly and severally. As the compensation payable to the claimant as per law was found to be higher than the original claim of Rs.15,00,000/-, the enhanced compensation of Rs.9,97,000/- is granted subject to payment of Court fee thereon by the claimant. The respondents

(owner and insurance company) are directed to deposit the compensation amount awarded within 60 days from the date of receipt of a copy of this judgment, after giving credit to the deposit of amount, if any, already made. On such deposit, the claimant is permitted to withdraw the same without furnishing any security.

11. The Civil Miscellaneous Appeal is partly allowed without costs.

12. The Cross Objection is allowed accordingly without costs.

13. Pending miscellaneous petitions, if any, in the MACMA and the Cross Objection stand closed.

JUSTICE P. MADHAVI DEVI

Date: 19.10.2022

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