HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.Nos.892 of 2008 and 2695 of 2009

COMMON JUDGMENT :

These two appeals are arising out of the same order dated 11.12.2007, in O.P.No.924 of 2006 on the file of Motor Accident Claims Tribunal-cum-XIII Additional District Judge, Nizamabad. MACMA.No.892 of 2008 is filed by the claimants for enhancement of compensation from Rs.4,06,000/- to Rs.6,00,000/-, whereas, MACMA.No.2695 of 2009 is filed by the Insurance Company, seeking to set aside the orders in the said O.P.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P.

3. The O.P. is filed under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.6,00,000/- for the death of one Bassi Pandarinathu in the accident that occurred on 26.04.2002 at 10.30 p.m. due to the rash and negligent driving of the driver of Tractor and Trailer bearing No.AP-25-T-3981 and AP-2W-5T-3982.

4. Heard both sides and perused the material on record.

5. The learned counsel for the claimants contended that the Tribunal ought to have granted Rs.6,00,000/- towards compensation with interest @ 24% per annum and ought to have considered the income of the deceased as Rs.10,000/- per month and also ought to have granted Rs.50,000/- towards non-pecuniary damages, Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of consortium for the 1st claimant, and therefore, prayed to enhance the compensation under other appropriate heads.

6. On the other hand, the learned Standing Counsel for the Insurance Company contended that the Tribunal has not properly appreciated the evidence on record and gave a perverse finding, taking the income of the deceased as Rs.3,000/-, though he is not cultivating any land. Further, the Tribunal has not properly deducted the personal expenses of the deceased. It is further contended that the Driver of the vehicle does not possess valid driving licence and by manipulating the crime records, some other person was shown as Driver of the vehicle, and therefore, prayed to

set aside the orders of the Tribunal as far as the liability of the Insurance Company is concerned.

7. It is the main contention of the learned counsel for the Insurance Company that the Driver of the Tractor does not possess valid driving licence, therefore subsequently, the son of the owner of the Tractor was shown as the Driver of the vehicle in order to get compensation from the Insurance Company. Admittedly, the name of one Srisailam was mentioned in Ex.A-1/FIR as accused, but FIR cannot be an encyclopedia and it is a weak piece of evidence in the eye of law. Therefore, the said contention of the Insurance Company cannot be considered, as the charge sheet was filed against one Nenavath Bantilal S/o.Mohan Lal, for the offence punishable under Section 304-A of IPC. It is relevant to mention that the Insurance Company did not make any effort to prove that Nenavath Bantilal was not the driver of the Tractor at the time of the accident. Therefore, it can be construed that the Insurance Company cannot be exonerated from its liability, and hence, the appeal of the Insurance Company deserves to be dismissed.

8. As far as the claimants' appeal is concerned, the appreciation of evidence would be with respect to the quantum of compensation alone.

9. The Tribunal has awarded an amount of Rs.3,84,000/- towards loss of dependency and an amount of Rs.22,000/- (Rs.2,000 + Rs.5,000 + Rs.15,000), not specified under any head and the total amount granted by the Tribunal is Rs.4,06,000/- with interest @ 7.5% and apportioned the same to the claimants.

10. The age and income of the deceased are disputed in this case. Admittedly, the postmortem examination report as well as the inquest report disclose that the deceased was aged about 28 years. But, PW-1 i.e. the wife of the deceased, in her cross-examination, admitted that the age of the deceased was 35 years at the time of the accident. There is no documentary evidence on record as to the income of the deceased, except the evidence of PW-1, which disclose that the deceased used to earn Rs.10,000/- per month by doing cultivation. In the absence of proper evidence, the Tribunal has considered the income of the

deceased as Rs.3,000/- per month. It is the contention of the learned counsel for the claimants that the oral evidence of PWs.1 and 2 disclose that the deceased was doing cultivation.

11. In the judgment of Hon'ble Supreme Court in **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited[1],** the income of the deceased was taken as Rs.4,500/- per month as 'Labour' even in the absence of documentary evidence, for the accident that occurred in the year 2003. Taking into consideration the said proposition, as the accident in this case also occurred in the year 2002, the earnings/income of the deceased is fixed as Rs.4,500/- p.m., and as stated supra, the age of the deceased can be considered as 35 years. If 40% future prospects is added to the income of the deceased, it would come to Rs.6,300/- (Rs.4,500+1,800). Thus, the annual income of the deceased would come to Rs.75,600/- (Rs.6,300 X 12). As the claimants are Six in number, $1/5^{th}$ of earnings of the deceased have to be deducted towards his personal expenses. Thus, his contribution to the family would come to Rs.60,480/-

[1] (2011) 13 SCC 236

(Rs.75,600 – Rs.15,120). As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**[2], the multiplier applicable is '16' for the age group of 31 to 35 years. If the multiplier '16' is applied, the loss of dependency would come to Rs.9,67,680/- (Rs.60,480 X 16).

12. Thus, the claimants are entitled to the compensation under the following heads;

1. Loss of dependency	-	Rs.9,67,680/-
2. Funeral expenses	-	Rs.15,000/-
3. Consortium (Rs.40,000/- each for 6 claimants)	-	Rs.2,40,000/-
4. Loss of Estate	-	Rs.15,000/-
TOTAL	-	**Rs.12,37,680/-**

13. Accordingly, MACMA.No.2695 of 2009 filed by the Insurance Company is dismissed and the MACMA.No.892 of 2008 filed by the claimants is allowed, granting a total compensation of Rs.12,37,680/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The claimants 1 to 6 being the wife, children and parents of the

[2] (2009) 6 SCC 121

deceased, are equally entitled for the said amount, only on payment of deficit Court fee. The claimants 1 to 6 are permitted to withdraw their respective shares, as the accident took place in the year 2002.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 23.09.2022

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