

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO

**PRESENT
THE HONOURABLE JUSTICE G SRI DEVI
AND
THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI**

M.A.C.M.A. NO: 2910 OF 2013

Appeal under Section 173 of Motor Vehicles Act against the Judgment/ order and decree made in MVOP No.535 of 2011 dated 24/09/2013 on the file of the Court of the Chairman, Motor Accidents Claims Tribunal –cum- Principal District Judge at Medak at Sangareddy.

Between:

1. Smt.Dammannagari Swathi, W/o late D.Venkataram Reddy, Occ: Housewife,
2. Master D.Shivarama Krishna Reddy, S/o late D.Venkatram Reddy, aged about 3 years Occ: Student
3. Dammannagari Krishna Reddy, S/o Venkatram Reddy, Occ: Agriculture,
4. Smt.D.Laxmi, W/o Krishna Reddy, Occ: Household,
(Appellant No.2 is minor, under the guardianship of his natural mother i.e., Appellant No.1)
(All R/o Shankarapally village and Mandal, Rangareddy District.)

...APPELLANTS/ CLAIMANTS

AND

A.P.S.R.T.C, Rep by Regional Manager, Sangareddy, Medak District.

...RESPONDENT/ RESPONDENT

For the Appellants : SRI PALLE SRIHARINATH, Advocate

For the Respondent : SRI N.PRAVEEN REDDY, Advocate

The Court made the following: ORDER

THE HON'BLE JUSTICE G. SRI DEVI

AND

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

MA.CMA.NO.2910 OF 2013

JUDGMENT (Per the Hon'ble Sri Justice G.Sri Devi)

Assailing the judgment and decree dated 24.09.2013 passed by the Chairman, Motor Accidents Claims Tribunal – cum – Principal District Judge, Medak at Sangareddy in MVOP.No.535 of 2011 dated 24.09.2013, the claimants filed the present appeal on two grounds viz.,(1) that the conclusion of the Tribunal that deceased was negligent to an extent of 50%, is without any evidence and (2) seeking enhancement of compensation granted by the Tribunal.

2. From the material on record it could be seen that the case of the claimant is that on the date of accident on 25.05.2010 at about 5.30 p.m., the deceased, his wife and son and his niece were returning from Pulimamidi village, after attending a marriage function in car and that when the car reached new saw mill of ChakalaiMallaiah, in the limits of Masanpally village, bus of the Corporation bearing AP -11-Z-5846 came from opposite direction in a rash and negligent manner and dashed against the car of the deceased, and a result, the deceased sustained injuries and he was shifted to Osmania General Hospital, Hyderabad, where he was declared dead.

3. To prove that the accident occurred due to rash and negligent driving of the driver of the bus of the Corporation, claimants examined P.W.2, the father of the deceased, and he deposed as per the averments made in the claim petition. But he

is not an eye witness to the incident. R.W.1 is the SI of Police, who prepared Ex.A-4 rough sketch of the scene of offence panchanama. He deposed that as per Ex.A-4, the car is stationed in the middle of the road and the bus is on the left side of the road.

4. Apart from the evidence of P.W.2, and R.W.1, the Tribunal has carefully examined Ex.A-4 rough sketch of the scene of offence. As per Ex.A-4, the Tribunal found that both the car, as well as bus, are almost in the middle of the road. This shows that both the vehicles have deviated the road rules. Considering Ex.A-4, the Tribunal concluded that it is an head on collusion and also considering the placement of the vehicles, which are on the middle of the road, concluded that there is 50% negligence on the part of the deceased and remaining 50% is on the part of the driver of the bus of the Corporation.

5. Learned counsel for the appellants / claimants, have not brought any contra evidence to interfere with the above finding of fact recorded by the Tribunal. Hence, the finding of the Tribunal in this regard does not warrant any interference.

6. Coming to the quantum, the claim of the claimants is that the deceased was aged 30 years, and was doing business as proprietor of M/s Shiva Shakthi Fertilizes and earning Rs.3,60,000/- per annum besides agriculture income of Rs.60,000/-.

7. Among the documents filed by the claimants, Ex.A-8 is the latest income tax return of the deceased for the year 2010-2011. In the judgment of the Apex Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION {(2009)6 SCC 121} it was held that where the deceased was a self-employed or was on a fixed salary

(without provision for annual increments, etc.), the court will usually take only the actual income at the time of death. Therefore, the Tribunal has rightly considered Ex.A-8 for calculating the loss of annual income of the deceased.

8. As per Ex.A-8, the annual income of the deceased is Rs.3,01,468/- and after deduction of tax of Rs.11,630/-, his net income is Rs.2,89,838/-. Hence, it is to be noticed that though the claimants have stated that deceased was getting an income of Rs.60,000/- per annum from agriculture, the tax returns does not reflect the same. Hence only the net income shown in the income tax return for the year 2010-2011 is taken into consideration.

9. The deceased has to be taken as a self-employed and in the income tax returns his date of birth is mentioned as 04.05.1970 and the accident occurred on 25.05.2010 and thus as on the date of the accident, he has completed 40 years and is running 41 years i.e., he is above 40 years. As per the judgment of the Apex Court in NATIONAL INSURANCE COMPANY vs. PRANAY SETHI {AIR 2017 SC 5157}, addition of 25% has to be made to the established income of the deceased, where the age of the deceased is between the age of 40 to 50. Since the deceased has completed 40 years, by the date of the accident, the claimants are entitled to 25% of the established income of the deceased towards future prospects.

10. The Tribunal has not granted any amount under the head of 'future prospects'. Hence, the same requires to be modified accordingly.

11. 25% (future prospects) of Rs.2,89,838/- comes to Rs.72,459.5, and if the same is rounded off, it comes to Rs.72,460/-. If this amount is added to the established income of the deceased, it comes to Rs.3,62,298/- {Rs.2,89,838/-

{established income} + Rs.72,460/- {25% of established income towards future prospects}.

12. The number of dependents of the deceased are four in number and as per the judgment of the Apex Court in *Sarla Verma* (Supra), the deduction towards personal and living expenses shall be at the rate of $1/4^{\text{th}}$.

13. If $1/4^{\text{th}}$ is deducted from Rs.3,62,298/- towards personal and living expenses of the deceased, the amount that would be spending by the deceased towards his family comes to Rs.2,71,724/-

14. The deceased was aged 41 years as on the date of the accident and as per column No.4 in the table given in the judgment of the Apex Court in *Sarla Verma* (supra), the appropriate multiplier is '15'. $\text{Rs.}2,71,724/- \times 15 = 40,75,860/-$. Thus the loss of income of the deceased comes to Rs.40,75,860/-

15. As per the judgment of the Apex Court in *Pranay Sethi's* (supra), the claimants are entitled to Rs.77,000/- under the heads of loss of estate, loss of consortium and funeral expenses i.e., Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. In the said judgment, the Apex Court held that the said amounts should be enhanced at the rate of 10% in every three years.

16. The judgment of the Apex Court in *Pranay Sethi's* case was delivered during the year 2017 and hence, now the claimants are entitled to 10% enhancement under the said conventional head. Therefore, this court is taking Rs.77,000/- under the said conventional heads.

17. Thus the claimants would be entitled to Rs.41,52,860/- (Rs.40,75,860/- + Rs.77,000/-).

18. As already noted above, the negligence on the part of the deceased is assessed at 50%. Therefore out of the amount arrived at by this court at Rs.41,52,860/-, the claimants would be entitled to only Rs.20,76,430/-.

19. Thus the claimants / appellants are granted compensation of Rs.20,76,430/- with interest at the rate of 7.5 per cent per annum from the date of the petition till the date of realization.

20. The apportionment of the compensation among the claimants, withdrawal and deposit, shall be in the same proportion as ordered by the Tribunal, and the advocate fee is confirmed. Any amount already deposited shall be given credit to.

21. The appeal is accordingly allowed to the extent indicated above.

22. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

//TRUE COPY//

Sd/-K.ONESIM
DEPUTY REGISTRAR

SECTION OFFICER

To
1. The Chairman, Motor Accidents Claims Tribunal -cum- Principal District Judge, Medak at Sangareddy. (with records)
2. One CC to Sri Palie Sriharinath, Advocate [OPUC]
3. One CC to Sri N.Praveen Reddy, Advocate [OPUC]
4. Two CD Copies

Kj.



HIGH COURT

DATED:19/07/2022



JUDGMENT

MACMA.No.2910 of 2013

PARTLY ALLOWING THE MACMA WITHOUT COSTS.

⑥
23/12/22