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

MA.CMA.Nos.113 AND 2642 OF 2014

COMMON JUDGMENT

The claimants filed MVOP.No.1632 of 2009 on the file of Additional Motor accidents Claims Tribunal – cum – XVI Additional Chief Judge, - cum – II Additional M.S.J., Hyderabad, under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Syed Anwar in a motor accident. The claimants are the parents and brother and sister of the deceased.

2. In the claim petition it is stated that on 7.8.2008 the deceased Syed Anwar, s/o Syed Khaaleeq along with his friends, was travelling from Goa to Hyderabad in the bus bearing No. MH 07 C 58. When the said bus reached passing of 20 KM., away from Kankani near Kharepaatan Avera Bridege, Goa, at 9.30 p.m., the driver of the said bus, drove the bus with high speed in a rash and negligent manner and thereby lost control on bus, and dashed to the road side banyan tree. As a result, the inmates of the bus, including the deceased, sustained grievous injuries and fractures. The deceased was shifted to Government Hospital, Goa, where he succumbed while undergoing treatment. The Police of Kanakavally, sindhadurg (Karnataka) registered case in Cr.No.130 of 2008 for the offence under Sections 297, 337, 338 and 304-A IPC against the driver of the bus.

3. The case of the claimants is that the deceased was aged 25 years, and prior to the accident, he was hale and healthy and was employed with Grace Travels, Basheerbagh, Hyderabad, and used to earn an amount of Rs.10,800/- per month, and was contributing the entire earnings to the family, and because of his death, they lost the source of income. Thus

the claimants, who are the parents, brother and sister of the deceased filed claim petition, claiming an amount of Rs.10,00,000/-.

4. The owner of the bus remained ex parte, and the insurer filed counter affidavit and denied the manner of the accident pleaded by the claimants, and further disputing the age avocation and income of the deceased, and also the dependency of the claimants on the deceased, sought for dismissal of the claim petition.

5. Based on the above pleadings, the Tribunal framed the following issues for consideration:

1. Whether the pleaded accident was occurred due to rash and negligent driving of the driver of the bus bearing No. MH 07 C 58 of the 1st respondent?
2. Whether the driver of the bus bearing No. MH 07 XC 58 was having valid driving licence at the time of accident?
3. Whether the petitioners are entitled to any compensation, if so, at what rarte and against which of the respondents?
4. To what relief?

6. In support of the case of the claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-7 were marked. On behalf of the respondents no witness was examined and Ex.B-1 copy of the insurance policy was marked.

7. The Tribunal vide award and decree dated 25.10.2013 considering the evidence of P.W.1, who is the father of the deceased, and P.W.2 who is the eye witness to the accident, coupled with Exs.A-1 to A-3, which are the certified copies of FIR, crime details form, and charge sheet, and further, as the insurance company did not choose to examine the driver of the crime vehicle, and as it did not lead any rebuttal evidence, held that the accident in question was caused to the rash and negligent driving of the driver of the bus

bearing No. MH -07 –C – 58, and that the deceased Syed Anwar sustained injuries and succumbed to the injuries while undergoing treatment. The Tribunal, taking the income of the deceased as Rs.4,500/- and by applying the appropriate awarded an amount of Rs.7,73,500/- towards compensation and held that both the respondents 1 and 2 are jointly and severally liable to pay the compensation.

8. Assailing the impugned award, the claimants filed MA.CMA.No.113 of 2014 seeking enhancement of compensation. Insurance Company also field MA.CMA.No.2642 of 2014 contending that the driver of the crime bus was not having valid driving licence and that the income of the deceased taken by the Tribunal at Rs.4,500/- is without any basis. With these contentions, the Insurance Company sought to set aside the impugned order.

9. Heard the learned counsel for the claimants and the counsel appearing for the Insurance Company and perused the material available on record.

10. As already noted above, the Tribunal based on evidence held that the accident occurred due to rash and negligent driving of the driver of the bus, and that the deceased died due to the said accident. The Insurance Company, to prove its claim that the driver of the bus was not having any valid licence, has not led any evidence, and it has not examined the driver of the offending bus and it did not lead any evidence either oral or documentary in support of its claim. Therefore, the contention of the Insurance Company that the driver of the offending bus was not having valid driving licence, cannot be sustained, and it is hereby rejected.

11. Coming to the quantum, it is to be seen that the deceased is found to be aged 26 years as on the date of the accident. As per the claim of P.W.1, who is the father of the deceased, he was earning an amount of Rs.10,000/- per month, but the salary certificate

issued by Ex.A-6 is found to be issued by an incompetent person, and to support the claim, the claimants have not filed any bank pass book or any other tangle evidence to prove that the deceased was receiving an amount of Rs.10,000/- per month. The evidence of P.Ws.1 and 3 only goes to show that the deceased was working with Grave Travels Pvt. Ltd., and they failed to prove his salary. In these circumstances, I am inclined to take the monthly income of the deceased as Rs. 6,000/- per month.

12. As per the Inquest Report Ex.A-4 and post mortem report Ex.A-5, the deceased is found to be aged 26 years. As per the judgment of Apex Court in ***NATIONAL INSURANCE COMPANY LTD. vs. PRANAY SETHI***[1], an addition of 40% of the established income shall be made towards future prospect. 40% of Rs.6,000/- would come to Rs.2,400/-. Thus the total monthly income of the deceased, including future prospects, would come to Rs.8,400/- (Rs.6,000/- + Rs.2,400/- = Rs.8,400/-)

13. The Apex Court in ***SARLA VERMA vs. DELHI TRANSPORT CORPORATION***[2], held that in case of bachelor, the deduction shall be at the rate of 50% towards personal and living expenses of the deceased. In the present, the deceased is a bachelor, and hence the deduction of personal and living expenses of the deceased shall be 50%. 50% of 8,400/- comes to Rs.4,200/- per month and Rs.50,400/- per month.

14. For the age group of deceased, who is 26, the appropriate multiplier as per column No.4 of the table given in the judgment of the Apex Court in Sarla Verma (supra), is '17'. Thus, the claimants are entitled to an amount of Rs.8,56,800/- (Rs.50,400/- X 17 multiplier = Rs.8,56,800/-) towards loss of dependency.

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[1]AIR 2017 SC 5157
[2](2009)6 SCC 121

15. As per the judgment of the Apex Court in PranaySethi's case (supra), the claimants are entitled to Rs.33,000/- towards conventional heads.

16. Further, as per the judgment of the Apex Court in ***MAGMA GENERAL INSURANCE CO. LTD vs. NANU RAM***[3] , since the claimants 1 and 2, who are the parents of the deceased, lost their unmarried son, they are entitled to an amount of Rs.40,000/- each towards filial consortium i.e., in all they are entitled to Rs.80,000/-.

17. The Tribunal found that after the accident, the deceased was in hospital for about five years and incurred incidental charges and granted an amount of Rs.50,000/-. Having regard to the facts and circumstances, the said amount granted by the Tribunal is sustained. However, the amount of Rs.25,000/- and Rs.10,000/- granted by the Tribunal towards funeral expense and loss of estate respectively, are accordingly modified as indicated above i.e., under these heads, they are entitled to only an amount of Rs.33,000/-.

18. Thus, in all the claimants are granted the following amounts:

1.	Loss of dependency	-- Rs. 8,56,800 – 00
2.	Conventional heads (loss of estate and funeral charges	-- Rs. 33,000 – 00
3.	Filial consortium to claimants 1 and 2	-- Rs. 80,000 – 00
4.	Incidental expenses (granted by the Tribunal)	-- Rs. 50,000 – 00
		Rs.10,19,000-00

19. Thus, the amount of Rs.7,73,500/- granted by the Tribunal is enhanced to Rs.10,19,000/- with interest at the rate of 7.5 per cent per annum from the date of the claim

[3](2017)16 SCC 680

petition till the date of realization. As held by the Tribunal, the insured and the insurer, are jointly and severally liable to pay the compensation.

20. The claimants shall pay the deficit court fee. Any amount already deposited by the Insurance Company shall be given credit to.

21. The remaining portion of the order of the Tribunal with regard to apportionment, deposit and withdrawal of compensation, is confirmed.

22. The appeal filed by the claimants in MA.CMA.NO.113 of 2014 is accordingly allowed to the extent indicated above, and the appeal filed by the Insurance Company in MA.CMA.No.2642 of 2014 is dismissed.

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

M.G.PRIYADARSINI,J

DATE:25—08—2022

AVS