THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.625 of 2013

JUDGMENT:

Heard Sri K.S.N.Murthy, learned counsel for the appellants and Sri Ravishanker Jandyala, learned counsel for the 2nd respondent.

2. This appeal under section 173 of the Motor Vehicles Act, 1988 (for short "the MV Act") has been filed by the claimants dis-satisfied by the quantum of amount awarded in decree and award dated 08.09.2006 in O.P.No.2818 of 2003 on the file Chairman, Motor Accident Claims Tribunal-Cum-X Additional Chief Judge (Fast Track court), City Civil Court, Hyderabad.

3. The claim petitioners are wife, minor children and mother of the deceased/Siddeshwar @ Siddulu who died in vehicular accident dated 21.05.2003.

4. The petitioners' case in brief is that, on 21.05.2003 while Siddeshwar @ Siddulu/deceased had been standing and talking to the driver of an Auto bearing No.AP-23-T-5813 a lorry trailer bearing No.AP-12-U-989 (for short "the lorry") driven by its

driver in rash and negligent manner dashed him and caused instantaneous death. Thus, the claim petition seeking compensation of Rs.5,00,000/-.

5. The tribunal on examining the material placed by the petitioners held that the accident occurred on account of rash and negligent driving of the lorry and awarded Rs.2,07,000/- towards compensation with interest @ 7.5% per annum against the owner and insurer of the lorry/1st and 2nd respondents.

6. The learned counsel appearing for appellant stated that the tribunal had rightly considered the material on record and leniently granted compensation to the petitioners. The aspects raised in appeal are not tenable as such there is no ground for interference and prayed for confirming the award.

7. In appeal, the claim petitioners contended that though the petitioners filed salary certificate Ex.A-6 issued by the employer, the tribunal disregarded the same and by erroneously fixed notional annual income at Rs.15,000/- by relying on Section 163 of the M.V. Act. That apart future prospect was not considered, the multiplier employed was improper and meager amounts were

granted towards conventional heads. Hence, prayed for re-assessment.

8. In this position, the point arises for determination is:

“Whether compensation awarded to the petitioners is just and proper?

9. The accident, death of the deceased/Siddeshwar @ Siddulu and the liability fastened against the 1st and 2nd respondents are not in dispute.

10. The petitioners pleaded that Siddeshwar @ Siddulu/ deceased was aged about 30 years and as private employee used to earn Rs.5,000/- per month by the date of accident. However, no specific document is filed to prove the age. The Post mortem examination report/Ex.A-4 and the inquest report/Ex.A3 are disclosing the approximate age of the Siddeshwar @ Siddulu/deceased at 30 years. As there is no other material, relying on these entries, the age of the deceased can be taken as 30 years at the relevant time. To prove the occupation and income, the petitioners placed salary certificate/ Ex.A-3 issued by Narsimha Fabricators, Balaji Nagar of Osmanbad. However, the author of the document was not examined. On the otherhand,

neither in the claim petition nor any where in evidence, the petitioners stated the occupation of the deceased as a private employee, but, neither the name of firm or the place of work has been referred. Thus the salary certificate/Ex.A-6 stands unconvincing. However, having regard to the age of the deceased and the wages of manual labour in relevant period, fixing a monthly salary of Rs.3,000/- would be appropriate.

11. In *National Insurance Company Ltd. Vs. Pranay Sethi and others*[1] the Hon'ble Apex Court held that while computing the compensation in the cases of death, future prospects has to be included ever for the self-employed. Accordingly, having regard to the age, occupation, 40% of income shall be taken as future prospects. Further, considering the fact that the petitioners are wife, minor children and mother, they can be accepted as dependents, as such 1/4th of the income has to be deducted towards personal expenditure. Thus, the annual contribution of the deceased to the petitioners would be of Rs.37,800/- (1/4th of Rs.50,400/-). If this amount is multiplied with the relevant multiplier to the age of the deceased i.e., 17, the sum would be

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[1] (2017) 16 SCC 860

of Rs.6,42,600/- (Rs.37,800x 17). The petitioners are entitled to this amount for 'Loss of Dependency'.

12. Besides, the petitioners are also entitled for Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral charges and Rs.40,000/- to 1st petitioner towards spousal consortium.

13. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation to 'consortium' given in the authority of *Magma General Insurance co. Ltd. vs. Nanu Ram & ors.*[2], in the authority between *United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others*[3] reinforced that the amounts for loss of consortium shall be awarded to the children as parental consortium for the loss of the parental aid, protection, security, love and affection and as filial consortium to the parents for the loss of love and affection and companionship of their grown up children. Wherefore, the 2nd and 3rd petitioners are entitled to Rs.40,000/- each towards parental consortium and Rs.40,000/- the 4th petitioner is entitled for filial consortium.

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[2] (2018) 18 SCC 130
[3] Civil Appeal No.2705 of 2020, dt.30.06.2020

14. Thus, in total, the petitioners are eligible for the compensation as follows :

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	6,42,000.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
Spousal consortium to 1st petitioner	40,000.00
Parental Consortium to 2nd & 3rd petitioners @ Rs.40,000/-each	80,000.00
Filial consortium to the 4th petitioner@ Rs.40,000/-	40,000.00
TOTAL	**8,32,600.00**

15. The Section 168 of M.V. Act contemplates awarding just compensation to the claim petitioners. In Nagappa's Case and in catena of judgments the Hon'ble Apex Court held that awarding amounts more than the claimed amount is proper, if the petitioners are entitled for such sum.

16. For the aforesaid the appeal is allowed as follows:

(i) the petitioners are awarded Rs.8,32,600/- (Rupees eight lakhs thirty two thousand six hundred only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

(ii) the owner and the insurer/1st and 2nd respondents are jointly and severally liable to pay the compensation and they are directed to deposit the awarded amount by setting of the amounts paid if any, within one month from the date of receipt of a copy of this judgment;

(iii) the apportionment among the petitioners shall be in terms of the impugned award.

(iv) on deposit of the awarded amount, the petitioners are permitted to withdraw entire amount apportioned in their favour.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date: 20.07.2022
VRKS

THE HON'BLE SRI JUSTICE N. TUKARAMJI

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