HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.2765 of 2013

JUDGMENT:

Heard Sri S.Chandraiah, learned counsel for the appellants and Sri A.Ramakrishna Reddy, learned counsel for the 2nd respondent.

2. Aggrieved and dissatisfied by the quantum of compensation awarded, the petitioners/claimants filed this Appeal against the decree and order dt.27.08.2013 in MVOP.No.1178 of 2011 passed by the Chairman, Motor Vehicle Accidents Claims Tribunal–cum–XIV Additional Chief Judge (Fast Track Court) City Civil Courts, Hyderabad.

3. The wife, minor children, parents and brother of Sri Lingya Naik who died in motor accident on 04.07.2011 filed this claim petition for compensation of Rs.6 lakhs under Section 166 of the Motor Vehicles Act (for short 'the MV Act').

4. The petitioners' case in brief is that on 04.03.2011 Lingya Naik/deceased and his friend were proceeding on motorcycle, *en route* an auto bearing registration No. AP-22-X-8663 (for short 'the auto') driven in rash and negligent manner struck the motorcycle, and caused injuries to the riders. Later, while undergoing treatment, Lingya Naik/deceased succumbed to injuries. Thus, pleading loss of dependency, the petition for compensation has been filed.

5. During enquiry, the 1st petitioner got examined herself as PW-1 and marked Exs:A-1 to A-6 and an eyewitness has been examined as PW-2. Per contra, the Senior Executive of the 2nd respondent was examined as RW-1 and marked Exs:B-1 to B-7.

6. The Tribunal after considering the materials and evidence on record concluded that the accident occurred as there was negligent driving on the part of the driver of the auto and awarded Rs.6 lakhs as compensation with

interest at 7.5% per annum against the owner and insurer of the auto/1st and 2nd respondents.

7. In appeal, the appellants/petitioners (hereinafter 'the petitioners') The claimants in the appeal contended that the tribunal erred in fixing notional income at Rs.4,000/- though the petitioners claimed daily earnings at Rs.350/-. Further the meager amounts were awarded towards consortium. Above all, though the tribunal arrived at compensation of Rs.9,89,000/-, limiting the compensation to the claimed amount of Rs.6 lakhs in the petition, is against the settled propositions. Thus prayed for re-evaluation and to grant just compensation.

8. Learned counsel for the 2nd respondent/insurer (hereinafter 'the respondent') pleaded that the tribunal has rightly considered the claim and leniently awarded the compensation. Further fairly submitted that the tribunal had assessed the amounts relying on the propositions by the date of accident and the same has to

be calibrated in terms of the dictum in **National Insurance Company Limited Vs. Pranay Sethi**[1].

9. Therefore, the point for determination is:

> *"Whether the compensation awarded to the petitioners is just and proper?"*

10. It is pertinent to mention that the tribunal had concluded the liability against the 1st respondent/owner/insured and directed the 2nd respondent/insurer to pay the awarded compensation amount first and to recover the same from the 1st respondent/owner. This aspect has not been disputed in the appeal. Hence, the liability as determined by the tribunal shall remain operative.

11. In regard to quantum of compensation, the petitioners pleaded that the deceased was aged 28 years and as labourer used to earn Rs.350/- a day. Having regard to the entries in the post mortem report/Ex.A-3, the age of the deceased can be brought to bear at 34

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[1] (2017) 16 SCC 680

years. As the claimed occupation is part of an unorganized sector, no document proving either occupation or income can be expected. However, having regard to the occupation and manual wages at relevant period, fixing notional income at Rs.4,000/- is found on lower side. Thus considering the daily wage at Rs.150/- fixing the monthly income at Rs.4,500/- is found reasonable.

12. It is settled position that while assessing the compensation in the cases of death, the future prospects of self employed shall be taken into account as annunciated in the dictum of *Pranay Sethi* (supra). Having regard to the age of the deceased, 40% of the income has to be added as future prospects. Further, considering the number of dependants and the directives in dictum of **Sarla Verma & others v. Delhi Transport Corporation and another[2],** 1/4th of the income has to be deducted towards personal expenditure. Thus, the annual contribution of the deceased to the petitioners

[2] (2009) 6 SCC 121

would be Rs.56,700/-. If this amount is multiplied with the relevant multiplier i.e. 16, the total would come to Rs.9,07,200/-. The petitioners are entitled to this amount under the head 'Loss of Dependency'.

13. Besides, the petitioners are also entitled for compensation under 'conventional heads' as prescribed in the dictum of **Pranay Sethi** (supra), i.e., Rs.15,000/- towards loss of Estate; Rs.15,000/- towards funeral charges; and Rs.40,000/- to the 1st petitioner towards spousal consortium.

14. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation of 'consortium' given in the authority of **Magma General Insurance co. Ltd. vs. Nanu Ram & others.**[3] in the authority between **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others**[4] fortified that the amounts for loss of consortium shall be awarded to the children who lose the care and protection of their parents as

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[3] (2018) 18 SCC 130
[4] (2020) 9 SCC 644

'parental consortium' and to the parents as, 'filial consortium' for the loss of their grown-up children, to compensate their agony, love and affection, care and companionship of deceased children.

15. Accordingly, Rs.40,000/- each is granted to the 2^{nd} and 3^{rd} petitioners as parental consortium, and Rs.40,000/- to 4^{th} and 5^{th} petitioner as filial consortium is awarded.

16. Therefore, appellants/petitioners are eligible for the compensation in the following terms, viz.

(i)	Loss of dependency	:Rs.9,07,200.00
(ii)	Loss of Estate	:Rs. 15,000.00
(iii)	Funeral expenses	:Rs. 15,000.00
(iv)	Spousal Consortium to 1^{st} petitioner	:Rs. 40,000.00
(v)	Parental Consortium to 2^{nd} & 3^{rd} petitioners Rs.40,000/- each	:Rs. 80,000.00
(vi)	Filial Consortium to 4^{th} & 5^{th}petitioners@Rs.40,000/- each	:Rs. 80,000.00
	TOTAL:	**Rs.11,37,200.00**

17. The Section 168 of the Motor Vehicles Act casts statutory duty on the Court to award just and reasonable compensation. Further the Hon'ble Apex Court in **Nagappa vs. Gurudayal Singh & others**[5], reinforced that the Courts shall endeavour in awarding just compensation, even if it is higher than the claimed amount in the petition. Thusly, the above arrived amount being just compensation is awarded to the petitioners.

18. Resultantly, the appeal is allowed and the impugned Award is modified, as under:

(i) the appellants/petitioners are awarded compensation of Rs.11,37,200/- (Rupees eleven lakhs thirty seven thousand two hundred only) with interest at 7.5% per annum from the date of petition till realization;

(ii) the finding of the tribunal that the 1st respondent is liable to pay the compensation,

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[5] (2003) 2 SCC 274

however, the 2nd respondent/insurer is directed to satisfy the award first and recover that amount from the 1st respondent, without recourse to institution of a separate suit, is affirmed.

(iii) the 2nd respondent/insurer is directed to deposit the awarded amount with interest within one (1) month from the date of receipt of copy of the judgment;

(iv) on deposit, the petitioners are permitted to 3withdraw the entire amount, as apportioned in the award by the tribunal.

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

N. TUKARAMJI, J

Date:15.09.2022
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