HON'BLE SRI JUSTICE N.TUKARAMJI

<u>M.A.C.M.A No.300 OF 2012</u>
<u>AND</u>
<u>M.A.C.M.A No.2340 OF 2013</u>

<u>COMMON JUDGMENT</u>:

The <u>M.A.C.M.A.No.2340 of 2013</u> is filed by the petitioners seeking enhancement of compensation and the <u>M.A.C.M.A.No.300 of 2012</u> is filed by the respondent/APSRTC questioning the liability and the quantum of compensation in the decree and allowed dated 11.07.2011 in M.V.O.P. No. 136 of 2010 on the file of Additional Chairman Accidents Claims Tribunal cum I Addl. Chief Judge, City Civil Courts, Secunderabad. Thus, these appeals are heard together and are being disposed of by this common judgment.

2. For the sake of convenience, parties hereinafter referred to as they were arrayed before the Tribunal.

3. The case of the petitioners in brief is that on 19.01.2010, while Sri.M. Bal Reddy/deceased was proceeding on Bajaj Pulsar motorcycle bearing No.AP-36-J-4899 (hereinafter ‘the motorcycle’) from Janagaon towards Hyderabad on the left side of the road and at the Reliance Petrol Bunk in the outskirts of Raigiri village, one APSRTC bus bearing No. AP-11-Z-2229 (hereinafter ‘the bus’) came in a rash and negligent manner and dashed the deceased from behind. As a result, M. Bal Reddy/deceased fell down and the bus ran over him and caused instantaneous death. Thereupon the wife, children, mother and brother of the deceased/Bal Reddy filed petition claiming compensation of Rs.20,00,000/-. The Tribunal on analyzing the evidence on record held that the accident was caused as there was rash and negligent driving of the bus, and awarded compensation of Rs.14,60,000/- and held that the respondent/APSRTC is liable to pay interest @ 7.5% per annum.

4. The appellants/petitioners in M.A.C.M.A. No. 2340 of 2013 (hereinafter 'the petitioners') contended that the Tribunal should have taken the income of the deceased as per the income tax returns which is buttressed by the evidence of the income tax officer/P.W.3. Further the Tribunal failed to consider the future prospectus and meager amounts were granted under the conventional heads. Thus, prayed for re-evaluation and to grant just compensation.

5. The appellant/respondent in M.A.C.M.A. No.300 of 2012 (hereinafter 'the respondent') would contest that the Tribunal should have considered the contributory negligence on the part of deceased for rash and negligent riding of the motorcycle without helmet and erred in considering the income of the deceased at Rs.20,000/- per annum without any basis. The Tribunal ought to have observed that the eye-witness is an interested

witness and the Tribunal failed to examine Ex.A1/F.I.R. and Ex.A2/Charge sheet in proper perspective. Therefore, on any count the awarded compensation is excessive. Hence, prayed for reconsideration.

6. Now the points arise for determination are :

> (i) Whether there was contributory negligence on the part of the deceased as pleaded by the Respondent/APSRTC in MACMA No.300 of 2012 ?
>
> (ii) Whether the compensation amount awarded to the petitioners is just and proper ?

7. The eye-witness Nimma Krishna Reddy as P.W.2 testified that the accident had occurred due to the negligent driving of the bus and that he lodged the police report. In cross-examination, it is elicited that he is the cousin of the deceased. In regard to witnessing the occurrence, the witness has clarified that at the relevant time himself and the deceased were proceeding on their

respective motorcycles and the deceased was alone on his motorcycle without helmet. Further asserted that the bus struck the motorcycle in the rearside.

8. There is nothing on the record or pointed out by the Respondent to decipher that the accident was due to the not wearing of the helmet by the deceased. Further, p*er se* the evidence of relative cannot be held as interested especially as no material fact has been elicited in the cross-examination to deduce the rash and negligent riding of the motorcycle by Balreddy/deceased. Having regard to these circumstances and as the bus struck the motorcycle of the deceased from behind no cogency is found in the claim of the respondent on the aspect of contributory negligence. Consequently, the finding of the Tribunal as to the negligent driving of the bus stands sustained.

9. With respect to the compensation, the petitioners pleaded that M.Bal Reddy/deceased was aged about 38

years at the time of accident and he was earning Rs.1,80,000/- per annum as civil contractor.

10. The entries in Ex.A6/Pan card is disclosing the date of birth of the deceased as 14.03.1972. Thus, the age of the deceased by the date of accident was 38 years.

11. With regard to the occupation of the deceased, the claim of the petitioners is civil contractor. However, except filing the income tax returns (ITRs) for the years 2008-09, 2009-2010 no other document is filed. As per these ITR receipts of 2008-09 and 2009-10 the gross income was shown as Rs.1,05,342/- and Rs.1,60,234/- respectively. The income tax officer as P.W.3 deposed affirming the particulars in Ex.A8 and Ex.A9. Further to substantiate the income of the petitioner, filed Form-16A statement/Ex.A8 for the period 01.04.2008 to 31.03.2009. This document is reflecting the payments with tax deduction at source by the employer of the

deceased. Thus, this material is demonstrating the occupation of M.Bal Reddy/deceased as civil contractor. Further, having regard to the fact that the income tax returns in individual capacity were filed in September, 2009 way before the accident no reason is found to discredit the particulars submitted therein to the Income Tax Department. In this view, it would be appropriate to consider the annual income shown in the ITR after deduction of tax, 1.e. Rs.1,59,180/- for assessment of compensation.

12. The Hon'ble Apex Court of India in the authority between ***National Insurance co. Ltd., Vs. Pranay Sethi***[1] held that while assessing the compensation for the death, the future prospectus of self-employed shall also be included. Thus, by considering the age of the deceased, 40% has to be included as future prospectus. Further, as per the directives in the authority of ***Sarla***

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[1] (2017) 16 SCC 860

<u>Verma & Ors Vs. Delhi Transport Corp.& Anr</u>[2] considering the number of the dependents, 1/4th of the income has to be deducted towards personal expenses, wherefore the annual contribution of the deceased to his family would be Rs.1,67,139/-. If this amount is multiplied with the relevant multiplier applicable to the age of the deceased i.e., 15, it would come to Rs.25,07,085/- (Rs.1,67,139/- X 15). The petitioners are entitled to this amount under the head of loss of dependency.

13. In addition, as per the dictum of **Pranay Sethi** (1 supra), petitioners are entitled to Rs.15,000/- for 'funeral expenses' and Rs.15,000/- as 'loss of estate' and Rs.40,000/- to the 1st petitioner towards 'spousal consortium'. Furthermore, by relying on the dictum in the **<u>United India Insurance Co. Ltd. vs. Satinder</u>**

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[2] ACJ 2013 Page 1409

Kaur @ Satwinder Kaur and others[3] 2nd and 3rd petitioners are awarded Rs.40,000/- each as parental consortium and Rs.40,000/- to the 4th petitioner is awarded as filial consortium.

14. Therefore, the petitioners are eligible for the compensation as under:

S.No.	Description	Amount in Rs.
1	Loss of dependency	25,07,085/-
2	Funeral expenses	15,000/-
3	Loss of estate	15,000/-
4	Spousal consortium to the 1st petitioner	40,000/-
5.	Parental consortium for 2nd and 3rd petitioners.	80,000/-
6.	Filial consortium for 4th petitioner	40,000/-
	Total	26,97,085/-

15. The Section 168 of the MV Act contemplates the statutory obligation on the court to award just compensation. It is settled law that the claimants can be

[3] Civil Appeal No.2705 of 2020, dt.30.06.2020

awarded with more compensation than claimed in the petition, if they are entitled. For this reason, the petitioners are awarded with the amounts arrived above.

16. In the result, M.A.C.M.A No. 300 of 2012 filed by the respondent/APSRTC is dismissed. No order as to costs.

17. M.A.C.M.A. No.2340 of 2013 filed by the petitioners is allowed in the following terms:

1. The petitioners are awarded a sum of Rs.26,97,085/- (Rupees Twenty Six Lakhs Ninety Seven Thousand and Eighty Five only) with interest @ 7.5% per annum from the date of petition till the date of realization.

2. The respondent/APSRTC is liable to pay compensation to the petitioners.

3. The respondent/APSRTC is directed to deposit the compensation awarded amount awarded

within one (1) month from the date of receipt of copy of this Judgment.

4. On such deposit, the petitioners are permitted to withdraw the entire amount, as per the apportionment in the Award.

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

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SRI JUSTICE N.TUKARMAJI

16th September, 2022

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