HONOURABLE SRI JUSTICE N. TUKARAMJI

**M.A.C.M.A.No.639 of 2013**

**JUDGMENT:**

Heard Sri S.Chandraiah, learned counsel for the appellants, Sri P. Vishnuvardhan Reddy, learned counsel for the 1st respondent and Sri Harinath Reddy Soma, learned counsel for the 2nd respondent.

2. In this appeal, the claim petitioners sought for enhancement of compensation granted in the decree and award dated 17.10.2012 in O.P.No.1084 of 2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-XXII Additional Chief Judge, City Criminal Courts, Nampally at Hyderabad.

3. The wife, minor children, and parents of Sri B.Srinivas/deceased who died in a motor accident dated 06.03.2010 filed claim petition for compensation of Rs.8 lakhs.

4. The petitioners' case in brief is that on 06.03.2010 at about 6 p.m. while B.Srinivas/deceased was waiting at

Bahupet bus stop, an Innova Car bearing registration No. AP-09-TPTR-8664 (for short 'the car') driven by its driver in rash and negligent manner dashed him and caused multiple injuries all over his body. Later, while undergoing treatment in Gandhi Hospital, he succumbed to injuries.

5. In enquiry before the tribunal, the wife of the deceased/1st petitioner got examined herself as PW-1 and marked Exs:A-1 to A-8. Further examined M.Babu, an eyewitness to the occurrence as PW-2 and one B.Laxmaiah has been examined as PW-3 to prove the occupation and income of the deceased. On the other hand, the 2nd respondent/insurer got marked Ex.B-1/insurance policy.

6. The tribunal after considering the materials on record held that the accident had occurred due to rash and negligent driving of the car and though believed the occupation as weaver, in absence of any convincing evidence proving income, notionally fixed the income at

Rs.4,000/- per month taking into account of the Minimum Wages Act. Thus, awarded compensation of Rs.5,96,000/- with interest at 7.5% per annum against the owner and insurer of the car/1st and 2nd respondents.

7. In appeal, the learned counsel for the appellants/claim petitioners (hereinafter 'the petitioners') contested that the tribunal ought to have considered the evidence of PW-3 who is co-worker in fixing the income at Rs.12,000/- per month. Further the future prospects were not taken into account and the amounts granted under conventional heads were meagerly awarded. Thus, prayed for reassessment and for granting just compensation.

8. The learned counsel for the insurer/2nd respondent (for short 'the respondent') pleaded that in absence of evidence the tribunal had rightly taken the notional income at Rs.4,000/- per month and the amounts awarded under other heads are reasonable. Therefore,

there are no grounds to interfere, as such, prayed for confirming the award.

9. In these rival pleas, the point arises for determination is:

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

10. In regard to quantum of compensation, the petitioners pleaded that by the date of the accident the deceased was aged about 32 years and was earning Rs.12,000/- per month as weaver. No specific document is filed to prove the age. However, considering the entries in Ex.A-3/post mortem report and other police record, the age of the deceased can safely be taken as 32 years.

11. In regard to occupation, the petitioners asserted that Srinivas/deceased was weaver, the PW-3/co-worker deposed that Srinivas/deceased used to earn Rs.350/- to 400/- per day. Further the entries in F.I.R./Ex.A-1,

inquest report/Ex.A-2 and charge sheet/Ex.A-6 are referring the occupation of the deceased as weaver. To note the respondents did not specifically disputed the occupation of the deceased. As the occupation is part of an unorganized sector, no document to prove the income can be expected. The tribunal referring the Minimum Wages Act, fixed the monthly income at Rs.4,000/- which is probable income of the manual labour at relevant period. There cannot be a diverse view that a weaver would require skill in the occupation and it would yield better income than the manual labour.

12. In this context, learned counsel for the petitioners placed Gazette of the Central Government dated 31.05.2010 vide Notification S.O. No.1258, Ministry of Labour and Employment wherein the Central Government has fixed Rs.8,000/- as monthly wages for the purpose of evaluation of compensation under Section 4 of the Employees Compensation Act, 1923 and pleaded that as the government after due deliberation fixed monthly

wages for the workmen in the year 2010 the same may be adopted for assessment of compensation. In absence of any other material adopting the guideline issued by the Central Government to notionally fix the monthly wage of the deceased at Rs.8,000/- is found appropriate.

13. 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 **National Insurance Company Limited Vs. Pranay Sethi**[1]. Having regard to the age and occupation of the deceased, 40% of the income has to be added as future prospects. Having regard to number of dependants, as per the directions in authority of **Sarla Verma & others v. Delhi Transport Corporation and another**[2]**,** 1/4th of the income shall be deducted towards personal expenditure. Thus, the annual contribution of the deceased to the petitioners would be Rs.1,00,800/-. If this amount is multiplied with the

[1] (2017) 16 SCC 680
[2] (2009) 6 SCC 121

relevant multiplier i.e. 16, it would come to Rs.16,12,800/-. The petitioners are entitled to this amount under the head 'Loss of Dependency'.

14. In addition, 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.

15. 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 & ors.**[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 'parental consortium' and to the parents as, 'filial

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

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

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

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

| | | | |
|---|---|---|---|
| (i) | Loss of dependency | :Rs. | 16,12,800.00 |
| (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.** | **18,42,800.00** |

18. 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 to award the just compensation, even if it is higher than the claim amount in the petition. Thusly, the above arrived amount is awarded to the petitioners as just and reasonable compensation.

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

(i) the appellants/petitioners are awarded compensation of Rs.18,42,800/- (Rupees eighteen lakhs forty two thousand eight hundred only) with interest at 7.5% per annum from the date of petition till realization jointly and severally payable by the 1st and 2nd respondents.

ii) the 1st and 2nd respondents are directed to deposit the awarded amount with interest within

[5] (2003) 2 SCC 274

one (1) month from the date of receipt of copy of the judgment;

(iii) the apportionment shall be in terms of the tribunal's award.

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

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

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**N. TUKARAMJI, J**

**Date:23.09.2022**
**ccm**