THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.1424 OF 2016

JUDGMENT:

This appeal is directed against the award dated 13.01.2016 in O.P.No.192 of 2013, on the file of the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Mahabubnagar (for short 'the Tribunal), wherein the said claim application filed by appellants herein seeking compensation was allowed-in-part, awarding Rs.17,11,000/- with interest at 9% per annum from the date of petition.

2. Heard learned counsel for the appellants and learned counsel for the 2nd respondent-insurer. None appears for the 1st respondent-owner of the lorry. Perused the material on record.

3. The appellants herein filed claim application seeking compensation of Rs.20 lakhs on account of death of the deceased Chinnapaga Bheemaiah @ Bheemraj, who died in a motor vehicle accident that occurred on 07.03.2013 at 05:30 p.m near Nannu Village Shivar. Claimant No.1 is the wife, claimant No.2 is the minor daughter and claimant 3 and 4 are the parents of the

deceased. According to the claimants, on that day, the deceased along with his troupe left for Banaganapalli Village from Nagarkurnool in Toofan vehicle bearing No.AP 27 X 1143 for conducting the programme “Relare Relea Janapadageethalu’. On the way near Nannuru Village Shivar on NH 18 road at Abhi Hotel, a lorry bearing No.GJ 25T 8685 which was proceeding towards Kurnool came in the opposite direction at high speed and dashed the Toofan vehicle which was on extreme left side of the road. As a result, the deceased sustained bleeding injuries and died instantly. The other inmates of the vehicle sustained severe injuries. Police registered a case in Cr.No.31 of 2013 against the driver of the lorry for the offences punishable under Sections 304-A, 337 and 338 IPC. According to the claimants, the deceased was aged 28 years and was hale and healthy at the time of accident and was eking out his livelihood by maintaining Toofan vehicle and earning Rs.20,000/- per month and used to contribute the same for the family. The deceased was also paying monthly installment of Rs.10,000/- for the vehicle which was taken on finance.

4. Respondent No.1-owner of the lorry remained *ex parte*. Respondent No.2-insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the tractor by its driver. The said finding had become final, as no appeal is preferred by the respondents questioning the same. The Tribunal further held that the claimants are entitled for a total compensation of Rs.17,11,000/-. Accordingly, an award was passed for the said amount with interest at 9% per annum. Not satisfied with the same, the claimants filed the present appeal seeking enhancement of compensation.

6. Learned counsel for the appellants submits that the deceased was a driver and earning Rs.10,000/- per month and in support of his contention, he relied on the decision of the Apex Court in **JANABAI Wd/O DINKARRAO GHORPADE v. I.C.I.C.I LOMBARD INSURANCE COMPANY LTD**[1], wherein the income fixed by the Tribunal at Rs.10,000/- per month in the

[1] LAWS (SC) 2022-8-38

absence of salary certificate was agreed by the Hon'ble Apex Court. The learned counsel submitted to fix the monthly income of the deceased at Rs.10,000/- per month and also add 40% on the income of the deceased towards future prospects and award compensation towards loss of future earnings.

7. Learned counsel for respondent No.2-insurer submits that the Tribunal had taken into consideration the fact that the deceased was a driver and after considering the oral evidence fixed the monthly income of the deceased at Rs.8,000/- per month and no error is committed by the Tribunal in fixing the monthly income of the deceased.

8. The only question that arises for consideration in the present appeal is – whether the claimants are entitled for enhancement of compensation, and if so to what extent?

9. It is not in dispute that the claimant No.1 is the wife, claimant No.2 is the minor daughter and claimant 3 and 4 are the parents of the deceased. According to the claimants, the deceased was hale and healthy and was aged about 28 years as on the date of the accident and is a professional driver. The deceased, having

purchased Toofan vehicle for his livelihood under finance, was paying the EMIs regularly from out of the income, besides supporting the family consisting of himself and claimant Nos.1 to 4. The claimants examined P.W.2, Managing Director of the Finance Company, to prove the fact that the deceased borrowed loan of Rs.2,05,000/- by agreeing to repay the same in 24 instalments with interest at 18% per annum and purchased the vehicle. Having regard to the said fact, the Tribunal, after taking into consideration the facts and circumstances of the case, had taken the income of the deceased at Rs.8,000/- per month and by adding 50% on his monthly income towards future prospects assessed the income at Rs.12,000/- (Rs.8,000/- + Rs.4,000/- i.e., 50% of Rs.8,000/-).

10. Admittedly, the Tribunal had taken into consideration the oral evidence of the claimants, particularly the evidence of P.W.2, and assessed the monthly income of the deceased at Rs.8,000/- and the same appears to be just and reasonable and in the absence of any proof, either oral or documentary, the same cannot be modified. Therefore, the income of the deceased can be taken at

Rs.8,000/- per month for the purpose of calculating the compensation. As per the decision of the Hon'ble Apex Court in **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS**[2], if 40% is added towards future prospects, the income of the deceased comes to Rs.11,200/- per month (Rs.8,000/- + Rs.3,200/-). Claimants 1 to 4 are the dependents of deceased and after deducting one-fourth towards personal expenses, the contribution of the deceased to the family comes to Rs.8,400/- per annum (Rs.11,200/- - Rs.2,800/- i.e., 1/4th of Rs.11,200/-) and Rs.1,00,800/- per annum (Rs.8,400/- x 12). The deceased was aged 28 years at the time of accident and if the appropriate multiplier '17' is applied as per the decision of the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**[3], the loss of dependency of the claimants works out to Rs.17,13,600/- (Rs.1,00,800/- x 17). Hence, the claimants are awarded the said amount towards loss of dependency.

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[2] 2017 ACJ 2700
[3] 2009(6) SCC 121

11. The Tribunal awarded Rs.1,00,000/- towards consortium to claimant No.1-wife and Rs.50,000/- towards loss of love and affection, care and guidance to claimant No.2-minor daughter and Rs.25,000/- towards funeral expenses. The amounts awarded by the Tribunal under the said conventional heads have to be modified in view of the decision of the Hon'ble Apex Court in **MAGMA GENERAL INSURANCE COMPANY LIMITED v. NANU RAM @ CHUHRU RAM**[4]**'**. Accordingly, claimant No.1 is entitled for Rs.40,000/- towards spousal consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The said quantified amounts under conventional heads should be enhanced at the rate of 10% for a span of every three years, as per the above decision. Thus, the claimants are entitled for 20% enhancement i.e., Rs.84,000/- (Rs.70,000/- + Rs.14,000/- i.e., 20% of Rs.70,000/-). Claimant No.2 being the minor daughter of the deceased is entitled to parental consortium at Rs.40,000/- and claimants 3 and 4, being the parents of the deceased, are entitled to filial consortium at Rs.40,000/- each.

[4] 2018 Law Suit (SC) 904

12. Thus, in all, the claimants are entitled for a compensation of Rs.19,17,600/- (Rs.17,13,600/- + Rs.84,000/- + Rs.40,000/- + Rs.80,000/-).

13. In the result, the appeal is allowed-in-part. The award of the Tribunal is modified by enhancing the compensation from Rs.17,11,000/- to Rs.19,17,600/-/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of award passed by the Tribunal i.e., 13.01.2016 till realization, payable by respondents 1 and 2 jointly and severally. The amount of compensation shall be apportioned among the claimants in the ratio as ordered by the Tribunal. There shall be no order as to costs.

14. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

19.10.2022
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