THE HON'BLE JUSTICE G. SRI DEVI

AND

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.1183 OF 2017

JUDGMENT **(Per the Hon'ble Justice G.Sri Devi)**

Assailing the quantum of compensation granted by the Motor Accident Claims Tribunal – cum – XXIV Additional Chief Judge, City Civil Courts, at Hyderabad (Tribunal) in O.P.No.2342 of 2011, the insurance company filed the present appeal.

2. Learned counsel appearing for the appellant / insurance company submits that the Tribunal while calculating the income of the deceased, has not deducted his profession tax and income tax. He further submits that claimants 2 and 3 who are daughters of the deceased, are majors aged about 30 years, and hence cannot be treated as dependents of the deceased. But the Tribunal without appreciating the same, awarded the compensation and ordered for apportionment, and hence the same is liable to be set aside.

3. On the other hand, learned counsel appearing for the claimants supporting the impugned judgment of the trial court sought for dismissal of the appeal.

4. A perusal of the entire judgment, it transpires that the learned Tribunal on careful consideration of the oral and documentary evidence available on record, has been pleased to award a sum of Rs.34,02,088/- together with proportionate costs and interest at the rate of 7.5% per annum from the date of petition, till the date of

deposit. The Tribunal directed both the respondents 1 and 2 to deposit the compensation amount within one month from the date of the order.

5. There is no dispute with regard to the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the offending Tata Sumo bearing No. MH 19 G 0936, and the deceased – T.Surender died in the said accident.

6. Coming to compensation, the case of the claimants is that the deceased was aged 52 years as on the date of the accident, and working as Class – I Assistant in Indian Government Mint, Cherlapally, Hyderabad, getting a monthly salary of Rs.43,780/- and that the claimant No.1 is the wife of the deceased, and claimants 2 and 3 are the daughters of the deceased, who are physically challenged and they are dependant on the earnings of the deceased, and as he died, they lost his earnings and also his love and affection.

7. To prove their income, claimants examined P.W.2, who is the Officer Finance and Accounts IG Mint, Cherlapally, Hyderabad. He deposed that the gross salary of the deceased as on the date of his death was Rs.43,780/- per month and that the deceased worked as Assistant Class – I as on the date of his death, that if the accident had not happened, he would have got an opportunity of getting 3% increment of his basic salary every year. In his cross-examination he deposed that the deceased was aged 56 years and 9 months at the time of his death and his net pay per month was Rs.28,839/- after deduction, and that the legal heirs of the deceased got death benefits amounting to Rs.1,43,643 + Rs.26,372/-.

8. Thus, as per the evidence of P.W.2, the gross salary of the deceased was Rs.43,780/-. A perusal of the copy of the 'service – cum –salary certificate' shows that only professional tax of Rs.200/- was being deducted from his salary. But while calculating the income of the deceased, the said amount was not deducted from his gross salary. In the said salary certificate, there is no deduction of income tax. Hence, only the professional tax has to be deducted from the salary of the deceased. Therefore, the monthly income of the deceased has to be taken as Rs.43,580/- instead of Rs.43,780/-.

9. The deceased is having fixed salary and he is aged 56 years and 9 months. As per the judgment of the Apex Court in National Insurance COMPANY vs. PRANAY SETHI {AIR 2017 SC 5157}, the claimants are entitled to 10% of the established income of the deceased as future prospects. 10% of Rs.43,580/- would come to Rs. 4,358/-. Thus the income of the deceased comes to Rs. 47,938/- (Rs.43,580/- + Rs.4,358/-). From this 1/3rd has to be deducted towards his personal expenses. Then the amount that the deceased would be spending on his family comes to Rs.31,959/- {(Rs.43,580/-(minus) Rs. 15,979/- (1/3rd)} per month, and Rs.3,83,508/- per annum.

10. The deceased was aged 56 years and nine months. As per the column No.4 in the table given in SARALA VERMA & ORS. v. DELHI TRANSPORT CORPORATION {(2009)6 SCC 121}, the appropriate multiplier is '9'. Then the loss of dependency comes to Rs.34,51,572/- (Rs.3,83,508/- x 9).

11. As per the judgment of the Apex Court in Pranay Sethi's case (supra), the claimants are entitled to Rs.70,000/- towards conventional heads viz., Rs.15,000/- for loss of estate; Rs.40,000/- to the 1st claimant towards loss of consortium; and

Rs.15,000/- towards funeral expenses. In the said judgment, the Apex Court held that the said amount of Rs.70,000/-, should be enhanced at the rate of 10% in every three years. 10% of Rs.70,000/- comes to Rs.7,000/-. Thus under the conventional heads, the claimants are entitled to Rs.77,000/-.

12. But the trial court granted Rs.25,000/- towards funeral expenses; Rs.25,000/- towards loss of estate and Rs.1,00,000/- towards loss of consortium, and thus in all granted Rs.1,50,000/-. This amount in the light of the judgment of the Apex Court in Pranay Sethi's case (supra) is reduced to Rs.77,000/-.

13. Thus in all the claimants are granted an amount of Rs.35,28,572/- (Rs.34,51,572 + Rs.77,000/-) with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization.

14. The order of the Tribunal with regard to apportionment, deposit in nationalized banks and withdrawal, are hereby confirmed.

15. In the present case, the insurance company filed appeal and as the Tribunal did not grant any future prospects, which the claimants are entitled to at the rate of 10% on the established income of the deceased, and though the claimants did not prefer any cross-objections, as they are entitled to the said amount in the light of the judgment of the Apex Court in PranaySethi's case (supra), this court is inclined to grant the said amount. In fact, the Apex Court in NAGAPPA vs. GURU DAYAL SINGH {(2003)2 SCC 274}, SRI LAXMAN @ LAXMAN vs. DIVISIONAL MANAGER ,ORITL. INS. CO. LTD {(2011)0 Supreme (SC)1054} and RAJESH v. RAJBIR SINGH {(2013)9 SCC 54}, held that the Tribunal is under a duty to grant just and fair compensation which could, in a given case be even more than what is actually

claimed in an application filed under Section 166 of the Act. In the light of this settled position of law, though the claimants have not preferred any appeal, they are granted 10% towards future prospects in the light of above settled legal position.

16. The claimants 2 and 3 are physically challenged and they filed Exs.A-9 and A-10 certificates and further they are not married. In view of these circumstances, it cannot be said that they are not the dependents of the deceased. Hence, the contention of the counsel for the appellant in this regard is rejected.

17. In the result, the appeal is disposed of accordingly.

18. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

G. SRI DEVI,J

M.G.PRIYADARSINI,J

DATE:11-07—2022

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