THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.1744 OF 2019 & 1774 OF 2016

COMMON JUDGMENT:

M.A.C.M.A.No.1744 of 2019 is directed against the award dated 18.04.2016 in M.V.O.P.No.310 of 2014, on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak, at Sangareddy, (for short 'the Tribunal), wherein the said claim application filed by appellants-claimants seeking compensation was allowed-in-part, awarding Rs.7,75,000/- with interest at 7.5% per annum from the date of petition till realization. M.A.C.M.A.No.1774 of 2016 is filed by the appellant-insurer aggrieved by the said award.

2. Heard learned counsel for the claimants and learned counsel for the insurer, in both the cases. Perused the record.

3. Claimants 1 to 3 filed claim application seeking compensation of Rs.10,00,000/- on account of death of the deceased Mohd. Ismail, who died in a motor vehicle accident that occurred on 07.04.2014 at 09:30 a.m., on the limits of Budhera cross roads, in front of MGV Bank on NH-65. Claimant No.1 is

the wife, claimants 2 and 3 are the son and daughter of the deceased. According to the claimants, on that day, the deceased was proceeding on his TVS XL Super two wheeler bearing No.AP 28 BN 8097 from Hyderabad towards Mamidipally Village and when he reached the limits of Budhera X Road, in front of Manjeera Grameena Bank on NH-65, meanwhile one TVS XL Super bearing No.AP 23 J 0392, driven by its rider in a rash and negligent manner, came in the opposite direction and dashed the motorcycle of the deceased. As a result of the accident, the deceased sustained multiple injuries. Immediately, he was shifted to Balaji Hospital, Sangareddy and from there to Osmania General Hospital, Hyderabad, where he succumbed to injuries. Police, Munipally registered a case in Cr.No.36 of 2014 against the rider of TVS XL Super bearing No.AP 23 J 0392, i.e., crime vehicle for the offence punishable under Section 304-A IPC and later filed charge sheet. The deceased hale and healthy at the time of accident and was running a bakery under the name and style ‘Tajmahal Bakery at Shriram Nagar, Jagathgirigutta, Hyderabad and was earning Rs.10,000/- per month and used to contribute all his earnings on the claimants.

4. The owner of the crime vehicle i.e., two wheeler remained *ex parte* before the Tribunal. The insurer crime vehicle 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 crime vehicle by its rider. The Tribunal further held that the claimants are entitled for a total compensation of Rs.7,75,000/-. Accordingly, an award was passed for the said amount with interest at 7.5% per annum. Not satisfied with the same, the claimants filed M.A.C.M.A.No.1744 of 2019 seeking enhancement of compensation, whereas the insurer filed M.A.C.M.A.No.1774 of 2016 on the ground that the Tribunal erred in taking the age of the deceased at 35 years instead of 45 years stated by the claimants in the claim application.

6. The points for determination are –

(i) whether the appellants-claimants in M.A.C.M.A.No.1744 of 2019 are entitled for enhancement of compensation, and if so to what extent?

(ii) whether the Tribunal committed error in computing the compensation by taking the age of the deceased at 35 years instead of 45 years as stated by the claimants in their claim application?

POINT Nos.1 & 2:

7. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the offending i.e., two wheeler by its rider is not seriously disputed. According to the claimants, the deceased was hale and healthy prior to the accident and was doing bakery business, earning Rs.10,000/- per month and was contributing the entire earnings to the maintenance and welfare of his family. It is not in dispute that claimant No.1 is the wife and claimants 2 and 3 are the son and daughter of the deceased. Though the claimants claimed that the deceased was earning Rs.10,000/- per month from bakery business, there is no proper reliable evidence, oral and documentary, to substantiate the contention that he was earning said amount. However, the Tribunal had taken into consideration the oral evidence of the claimants and fixed the monthly income of the deceased at Rs.6,000/- per month and after deducting one-third towards

personal expenses, arrived at the contribution of the deceased to his family at Rs.4,000/- (Rs.6,000/- - Rs.2,000/- i.e., 1/3 of Rs.6,000/-).

8. The evidence on record shows that the deceased was aged ‘45’ years. However, the Tribunal had taken the age of the deceased as ‘35’ and calculated the compensation without any valid reasons. The claimants in their claim application have also shown the age of the deceased as ‘45’ years. Moreover, the age of claimant No.1, who is wife of the deceased, is shown as 40 years in the claim application. Considering the same, the age of the deceased is taken as ‘45’ years for computing the compensation. By adding additional 40% towards future income of the deceased, as per the decision of the Hon’ble Apex Court in **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS**[1], the same works out to Rs.5,600/- per month (Rs.4000/- + Rs.1,600/- i.e., 40% of Rs.4,000/-) and Rs.67,200/- per annum. The appropriate multiplier applicable to the age of the deceased is ‘14’, as per the decision of

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[1]2017 ACJ 2700

the Hon'ble Apex Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**[2]. Thus, the loss of future earnings can be computed at Rs.9,40,800/- (Rs.67,200/- x 14). The Tribunal has not awarded any compensation towards conventional heads and parental consortium. As per the decision of the Apex Court in **PRANAY SETHI'**s case (1 supra), the claimants are entitled for compensation of Rs.70,000/- towards conventional heads i.e., Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. As per the decision of the Hon'ble Apex Court in **MAGMA GENERAL INSURANCE COMPANY LIMITED v. NANU RAM @ CHUHRU RAM**[3], claimant Nos.2 and 3 being the children of the deceased are entitled for Rs.40,000/- each towards parental consortium. Thus, in all, the claimants are entitled Rs.10,90,800/- (Rs.9,40,800/-+Rs.70,000/-+Rs.80,000/-). The impugned award is modified accordingly.

9. Accordingly, M.A.C.M.A.No.1744 of 2019 is allowed enhancing the compensation from Rs.7,75,000/- Rs.10,90,800/-.

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[2]2009(6) SCC 121
[3]2018 Law Suit (SC) 904

The enhanced amount shall carry interest at 7.5% p.a. from the date of award passed by the Tribunal i.e., 18.04.2016 till realization, payable by owner of the crime vehicle and the insurer jointly and severally. The claimants shall pay deficit court fee on the enhanced compensation. The amount of compensation shall be apportioned among the claimants in the ratio as ordered by the Tribunal. Insofar as M.A.C.M.A.No.1744 of 2019 filed by the insurer, the same is disposed of. There shall be no order as to costs.

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

A.SANTHOSH REDDY, J

04.11.2022

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