

THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

M.A.C.M.A. No.605 of 2016

JUDGMENT:

This appeal is filed by the claimants / dependants of the deceased, who died in the accident that occurred on 23.10.2005, seeking enhancement of the compensation awarded vide order dated 05.08.2011, passed in MVOP No.558 of 2009 by the Motor Accidents Claims Tribunal (District Judge), Khammam.

2. Heard. Perused the record.

3. The claimants/appellants have filed claim petition in MVOP No.556 of 2009 seeking compensation of Rs.14,00,000/- from the respondents on account of death of Yimadavathuni Pitchaiah in a motor vehicle accident that occurred on 23.10.2005 while he was returning to Polancha and reached near Damalavagu on his TVS Moped due to hit by lorry bearing No.AP27 T 5333 driven in a rash and negligent manner. The Tribunal has awarded a total compensation of Rs.5,90,000/- under all heads to the claimants by fixing the liability jointly and severally on

respondents No.1 and 2 and also fixing the apportionment of compensation amount amongst the claimants. Seeking enhancement of the quantum of compensation awarded, the claimants, who are the appellants herein, have preferred this appeal.

4. It is contended on behalf of the appellants that the deceased was 56 years of age at the time of accident and he was working as Plant Attendant in K.T.P.S. Paloncha and used to draw an amount of Rs.20,494/- per month towards salary and he was hale and healthy at the time of accident. Learned counsel for the appellants submitted that as per the salary certificate for the month of October, 2005, the gross salary of the deceased was Rs.20,419/- and the Tribunal, while computing the loss of earnings of the deceased, has reduced the recoveries made there from and has taken the net salary of the deceased only at Rs.8,000/- and thereafter also has considered only Rs.6,000/- as monthly income of the deceased, which is not correct. Learned counsel for the appellants also

contended that since the age of deceased at the time of the accident was 56 years, the multiplier to be used is 9 whereas the Tribunal has taken it at 8. Learned counsel for the appellants also contended that since the age of deceased was 56 years, the claimants are also entitled for compensation towards loss of future prospects @ 40% of the earnings. Learned counsel for the claimants also contended that the claimants are also entitled for other pecuniary benefits / compensation such as spousal and parental consortium, enhancement of funeral expenses and loss of estate as directed by Hon'ble Supreme Court in the case between **National Insurance Co. Ltd vs. Pranay Sethi**¹.

5. There is no representation on behalf of the respondents.

6. Having regard to the material on record and the contentions raised by the learned counsel for the appellants, it is noticed that the deceased was aged about

¹ (2017) 16 SCC 680

56 years at the time of death and therefore, correct multiplier applicable is 9 instead of 8. Therefore, while computing the compensation towards loss of earnings it has to be applied. As per the salary certificate, the gross salary of the deceased for the month of October, 2005 was Rs.20,419/- and except for the statutory deductions and also deduction towards Income Tax, no other deductions need to be considered while arriving at the net salary of the deceased. Since there is a lapse of nearly fifteen years and it is not possible to go back to find out the actual Income Tax liable to be paid by the deceased on his monthly income of those years, it is considered reasonable to adopt a sum of Rs.16,000/- as monthly income of the deceased and the compensation is to be computed accordingly. Further, since the age of deceased was 56 years at the time of accident, 10% has to be added to his earnings as compensation towards loss of future prospects as per the decision rendered in **Pranay Sethi's case (referred supra)**. Apart from above, the 1st claimant/appellant is also entitled for spousal consortium at Rs.40,000/- with 10%

increase thereon and claimants No.2 and 3, being the children of deceased, are each also entitled for parental consortium at Rs.40,000/- with 10% increase thereon and claimant No.4, being the mother of deceased, is entitled to the filial consortium at Rs.40,000/- with 10% increase thereon. In addition to the above, the claimants are also entitled to Rs.15,000/- with 10% increase thereon towards funeral expenditure and Rs.15,000/- with 10% increase thereon towards loss of estate. $1/4^{\text{th}}$ of the earnings of the deceased have to be deducted towards personal expenditure. Accordingly, the compensation is enhanced as under.

7. In the light of the above mentioned discussion, the appellants are entitled to the following amounts:

	HEAD	COMPENSATION AWARDED
1	Income	Rs.16,000/- per month
2	Multiplier	9
3	Personal expenditure	$1/4^{\text{th}}$
4	Future prospects	10%
5	Loss of earnings	Rs.16,000/- (X) 9 Multiplier (X) 12 months (+) 10% future

		prospects (-) 1/4 th personal expenditure = Rs.14,25,600/-
6	Funeral expenses	Rs.15,000/- (+) 10% = Rs16,500/-
7	Loss of estate	Rs.15,000/- (+) 10% = Rs.16,500/-
8	Spousal consortium payable to claimant No.1	Rs.40,000/- (+) 10% = Rs.44,000/-
9	Parental consortium payable to claimants No.2 and 3	Rs.80,000/- (+) 10% = Rs.88,000/-
10	Filial consortium payable to claimant No.4	Rs.40,000/- (+) 10% = Rs.44,000/-
	Total Compensation	Rs.16,34,600/- along with interest @ 7.5%per annum from the date of filing of the claim petition till realization.

9. In the result, this Civil Miscellaneous Appeal is allowed in part without costs and the Award dated 05.08.2011, passed in MVOP No.558 of 2009 by the Motor Accidents Claim Tribunal (District Judge), Khammam is modified by awarding a total compensation of Rs.16,34,600/- (Rupees sixteen lakhs, thirty four thousand and six hundred only) along with costs and interest @ 7.5%per annum from the date of filing of the claim petition till realization against the respondents No.1 and 2 jointly

and severally. As the compensation payable to the appellants as per law was found to be higher than the original claim of Rs.14,00,000/-, the enhanced compensation of Rs.2,34,600/- is granted subject to payment of Court fee thereon. The respondent insurance company is directed to deposit the compensation amount within a period of 60 days from the date of receipt of a copy of this judgment. On the deposit being made by the respondent insurance company, the appellants are permitted to withdraw the same as per the following moieties without furnishing any security:

Appellant No.1 (Wife): Rs.9,34,000/-.
Appellant No.2 (Daughter): Rs.2,00,000/-.
Appellant No.3 (Daughter): Rs.2,00,000/-.
Appellant No.4 (Mother) : Rs.3,00,000/-.

10. Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

P.MADHAVI DEVI, J

Date: 16.06.2022

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