

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.119 of 2018 and 261 of 2018

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.119 of 2018 filed by the claimants seeking enhancement of compensation and M.A.C.M.A.No.261 of 2018 filed by the respondent No.3-M/s. Magma HDI General Insurance Company Limited challenging the quantum of compensation, are directed against the very same award and decree, dated 31.07.2017 made in M.V.O.P.No.1706 of 2015 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XIII Additional Chief Judge, City Civil Courts at Hyderabad (for short “the Tribunal”).

2. For the sake of convenience, hereinafter the parties will be referred to as per their array before the Tribunal.

3. The facts, in issue, are as under:

The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents 1 to 3, claiming compensation of Rs.20,00,000/- for the death

of one S.Venkatesh (hereinafter referred to as “the deceased”), who died in the accident that occurred on 30.08.2014. According to the claimants, on 11.06.2015 the deceased along with another deceased Uppalanchi Balaiah was attending to their carpentry duty in front of the furniture shop of Uppalanchi Balaiah, which is situated nearby Yadav Hotel at Kistapur Road, Medchal, in the meantime, one Water tanker/tractor bearing No. AP.01.AA.5260 being driven by its driver came from Kistapur road towards Medchal side in a rash and negligent manner with high speed and came to its wrong side and dashed the deceased Venkatesh and Balaiah and dragged them inside the shop. Due to the sudden impact, Balaiah sustained crush injury on his head and all over the body and died on the spot. The deceased herein i.e., S.Venkatesh was immediately shifted to Gandhi Hospital, Secunderabad and while undergoing treatment, he was succumbed to injuries on the same day. According to the petitioners, the deceased was aged about 35 years, Carpenter in the furniture shop of other deceased Uppalanchi Balaiah at Medchal and used to earn

Rs.20,000/- per month. Therefore, they are seeking compensation of Rs.20,00,000/- against the respondent Nos.1 to 3, who are driver, owner and insurer of the offending vehicle i.e., water tanker/tractor bearing No. AP 01 AA 5260 jointly and severally.

4. Respondent No.1, driver of the offending vehicle filed counter denying the averments of the petition and the manner of accident. He further submitted that he is having valid driving license to drive the vehicle and the compensation claimed by the petitioners is excessive.

5. Respondent No.2 who is owner of the offending vehicle filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the offending vehicle was duly insured with respondent No.3-Insurance Company and the policy was in force as on the date of accident.

6. Respondent No.3 who is insurer of the offending vehicle filed counter disputing the manner of accident, age, avocation and income of the deceased.

7. Based on the above pleadings, the Tribunal framed the following issues:

1. *Whether the petitioner sustained injuries in the accident occurred due to the rash and negligent driving of the driver of the water tanker/tractor bearing registration No. AP 01 AA 5260?*
2. *Whether the petitioners are entitled to the compensation and whether the respondents are liable for the compensation, if so, to what extent?*
3. *To what relief?*

8. In order to prove the issues, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of the petitioners. On behalf of the respondents, no witnesses were examined, however, Ex.B1 was marked.

9. After considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of water tanker/tractor and awarded the total compensation of Rs.12,61,000/- with proportionate costs and interest at 6% per annum from the date of petition till realization against the respondent Nos.1 to 3 jointly and severally.

10. Heard both the learned counsel and perused the material available on record.

11. Learned Counsel for the claimants has submitted that though the claimants established that the accident occurred due to the rash and negligent driving of the offending vehicle, the tribunal has awarded very meager amount.

12. The learned Standing Counsel for the respondent No.3-Insurance Company contended that the tribunal ought to have taken the notional income of the deceased at Rs.4,500/- instead of Rs.7,500/-. Further the Tribunal added future prospects at 30% of his actual income instead of 25% of his actual income. It is further contended that the compensation granted by the tribunal towards non-pecuniary damages is highly excessive and prays to set aside the Order passed by the Tribunal.

13. Admittedly, there is no dispute with regard to the manner of accident. However, considering the evidence of PWs.1 and 2 coupled with the documentary evidence

available on record, the tribunal has rightly held that the accident occurred due to the rash and negligent driving of the driver of the water tanker/tractor.

14. With regard to the quantum of compensation, according to the petitioners, the deceased was aged about 35 years and used to earn Rs.20,000/- per month as a carpenter. However, as there is no documentary evidence to prove the income of the deceased, considering the wages fixed by the Labour Department, the tribunal has rightly taken the income of the deceased as 1st class Carpenter at Rs.7,500/- per month. But the tribunal erred in adding the future prospects at 30% of his income. Further the claimants are entitled to addition of 25% towards future prospects to the established income, as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹. Therefore, future monthly income of the deceased comes to Rs.9,375/- (Rs.7,500/- + Rs.1,875/- being 25% thereof). Since the deceased left as many as three persons as the dependants, 1/3rd of his

¹ 2017 ACJ 2700

income is to be deducted towards his personal and living expenses. Then the contribution of the deceased would be Rs.6,250/- (9,375 – 3,125 = 6,250) per month. Since the deceased was aged about 45 years at the time of accident, the appropriate multiplier in light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**² would be “14”. Then the loss of dependency would be Rs.6,250/- x 12 x 14 = **Rs.10,50,000/-**. In addition thereto, under the conventional heads, the claimants are granted **Rs.77,000/-** as per the decision of the Apex Court in **Pranay Sethi** (supra). Further the petitioner No.3 who is minor son of the deceased is also entitled to parental consortium at **Rs.40,000/-** as per the **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram**³. Thus, in all the claimants are entitled to **Rs.11,67,000/-**.

15. Accordingly, while dismissing the M.A.C.M.A.No.119 of 2018, M.A.C.M.A. No.261 of 2018 is partly allowed by reducing the compensation amount awarded by the

² 2009 ACJ 1298 (SC)

³ 2018 Law Suit (SC) 904

Tribunal from Rs.12,61,000/- to **Rs.11,67,000/-**. The compensation amount shall carry interest at 6% per annum from the date of petition till the date of realization, payable by respondent Nos.1 to 3 jointly and severally. The compensation amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the compensation is one month from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the compensation without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

11.01.2023
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M.G.PRIYADARSINI,J