THE HONOURABLE DR.JUSTICE G.RADHA RANI

M.A.C.M.A. NOS. 1011 OF 2010 & 3150 OF 2011

COMMON JUDGMENT:

As these appeals are arising out of a common judgment in O.P.No.2186 of 2007 by the VII Additional Metropolitan Sessions Judge cum XXI Additional Chief Judge, Hyderabad, they are disposed of by this common judgment.

2. M.A.C.M.A.No.1011 of 2010 is filed by the claimants seeking enhancement of compensation, dissatisfied with the amount of Rs.5,20,000/- with interest @ 7.5% per annum awarded by the Tribunal as against their claim of Rs.7,00,000/-.

3. M.A.C.M.A.No.3150 of 2011 is filed by the Insurance Company contending that the Tribunal failed to take into account the contributory negligence of the deceased in crossing the road at the time of the accident and fixing the liability on par with the insured. The Insurance Company contended that the award of Rs.5,20,000/- was excessive and prayed to set aside the orders in O.P.No.2186 of 2007 dated 16.11.2009.

4. Heard Smt. B.Roja Ramani, learned counsel for the appellants – claimants and Sri. A.Rama Krishna Reddy, learned counsel for the respondent No.2 - Insurance Company.

5. The parties are hereinafter referred as arrayed before the Tribunal.

6. As per the case of the claimants, the deceased was working in Municipal Corporation of Hyderabad (for short "MCH") Vigilance Cell on temporary basis and was also working as etcher and mounter in Chary Process in the evening hours and was earning an amount of Rs.5,750/- per month.

7. On 12.09.2006 at about 1:30 PM, while the deceased was proceeding on foot, near White House Function Hall, L.B.Nagar, an auto (pick-up van) bearing No. AP 28 W 5704 came from his behind in high-speed, in a rash and negligent manner and hit the deceased, due to which he sustained grievous injuries and fell down. He was shifted to Yashoda Hospital, Malakpet. The doctors after first-aid advised to take the wounded to Osmania Hospital, where he succumbed to injuries. Police, Saroor Nagar registered a case vide Crime No.914 of 2006 under Section 304-A of IPC. The owner and insurer of the auto bearing No. AP 28 W 5704, were shown as respondents 1 and 2.

8. The respondent No.1 remained ex-parte.

9. The respondent No.2 filed counter calling for strict proof of age, income and occupation of the deceased, the manner of the accident, that the driver of the auto was holding a valid and effective driving license at the time of the alleged accident.

10. The claimants got examined P.Ws.1 to 3 and marked Exs.A1 to A10 on their behalf. The respondent No.2 – Insurance Company filed the copy of Insurance Policy, marked as Ex.B.1.

11. On considering the oral and documentary evidence on record, the Tribunal considered that as the auto hit the deceased from his behind, there would be a clear view to the driver of the person going ahead of it, and as such held that the accident occurred due to the negligent driving of the driver of the auto bearing No. AP 28 W 5704. As the Tribunal came to such conclusion basing on the criminal case records marked as Ex.A1, the certified copy of the FIR and Ex.A2, the certified copy of the charge-sheet and as no rebuttal evidence was adduced by the respondent No.2 - Insurance Company by examining the driver of the auto or by examining any other witness who witnessed the accident, to prove the negligence of the deceased in the accident, this Court does not find any error in the observation of the Tribunal on this aspect. As such, the contention of the Insurance Company with regard to the contributory negligence on the part of the deceased is rejected.

12. The main contention of challenge by both the claimants as well as the Insurance Company is with regard to the quantum of compensation awarded by the Tribunal and the observations of the Tribunal with regard to the income of the deceased.

13. The contention of the claimants was that the deceased was working in MCH, Vigilance Cell on temporary basis as well as he was working in Chary Process on part-time in the evening hours and he was earning Rs.75/- daily by working in MCH and Rs.3,500/- per month by working in Chary Process. The claimants got filed a duty allowance certificate issued by the Commandant, Home Guards, Hyderabad City, dated 03.11.2006, marked under Ex.A8 to show that the deceased was enrolled as Home Guard in the year 1994 and that he was paid duty allowance of Rs.75/- per day on duty turned out by him during his tenure. The claimants also filed the Identity Cards issued by the Commissioner, MCH, marked under Ex.A9, to the deceased in proof of his service at MCH.

14. The claimants also got examined PW.3, the proprietor of Chary Process, who stated that the deceased used to work in their Process as etcher and mounter from 3:00 PM to 8:00 PM since 1995 till his death and he used to pay Rs.3,500/- per month and filed the salary certificate issued by him, marked as Ex.A10. But he admitted in his cross-examination that there were eight (08) employees working in his company but he was not maintaining any register to show the salaries paid to the employees, no card was issued to the deceased to

show that he was working as a part-time employee, no appointment letter was issued to the deceased, no accounts were maintained in proof of payment of salary and that he had not raised the salary of the deceased since his joining. He also stated that no certificate was submitted by the deceased at the time of his appointment to show that he knew technical work.

15. The Tribunal disbelieved the evidence of PW.3. But considering Exs.A8 and A9, believed that, he worked as a Home Guard, but, however, as his earnings were not corroborated by documentary evidence, considered his monthly income as Rs.4,200/- per month.

16. This Court also agrees with the observation of the Tribunal in disbelieving the evidence of PW.3 and considering the deceased as a Home Guard as per the document marked under Ex.A8 issued by the Municipal Corporation of Hyderabad. However, as the daily wages of the Home Guards are also increased subsequently and when the earnings of a vegetable vendor itself is considered as Rs.6,500/- per month by the Hon'ble Apex Court, for the accident occurred in the year 2008 in **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited**[1], and the earnings of a labourer on guesswork was also considered as Rs.4,500/- per month by the Hon'ble Apex Court, considering that the wage of the labourer would be Rs.100/- and Rs.150/- per day for the accident occurred in the year 2004 in **Sri**

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[1] 2014 ACJ 627

Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited[2], it is considered fit to take the income of the deceased as atleast Rs.5,000/- per month.

17. As per the Constitutional Bench Judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi and Others**[3] and in **Hem Raj v. Oriental Insurance Company Limited and Others**[4], an addition of percentage should be considered even for self-employed persons towards their future prospects, an addition of 40% of his income is considered towards the future prospects of the deceased, as per the age of the deceased mentioned in inquest report, marked under Ex.A3 and PME, marked under Ex.A4 which would disclose his age as 40 years. The Tribunal also rightly considered the relevant multiplier as 15, considering his age as 40 years, as per the Judgment of the Hon'ble Apex Court in **Sarla Verma v. Delhi Municipal Corporation**[5]. Considering the number of dependants being four (04), 1/4th is to be deducted towards the personal expenses of the deceased as per the Judgment of the Hon'ble Apex Court in **Sarla Verma v. Delhi Municipal Corporation** (5 supra). Hence, the loss of dependency to the claimants is calculated as Rs.5,000/- + Rs.2,000 (40% of Rs.5,000) = Rs.7,000/-, and on deducting one-fourth from it, the amount comes to Rs.5,250/- (Rs.7,000 (-) Rs.1,750/- (= 1/4th

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[2] 2011 ACJ 2436
[3] 2017 ACJ 2700
[4] 2018 ACJ 5
[5] 2012 ACJ 1298

of Rs.7,000/-). Hence, the total loss of dependency is Rs.9,45,000/- (Rs.5250/- X 12 X 15).

18. As claimant No.1 is the wife of the deceased, she is entitled to an amount of Rs.40,000/- plus 10% raise for every 3 years, as such Rs.44,000/- towards spousal consortium and as claimants 2 and 3 are the children of the deceased, they are entitled for Rs.44,000/- each towards parental consortium and as claimant No.4 is the mother of the deceased, she is entitled to an award of Rs.44,000/- towards filial consortium as per the judgment of the Hon'ble Apex Court in **Magma General Insurance Company Limited v. Nanu Ram[6].**

19. The claimants are also entitled to an amount of Rs.15,000/- plus 10% raise for every three years on the conventional head of "loss of estate" and "funeral expenses" as per the Judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi** (3 supra).

20. Hence, the total amount of compensation entitled by the claimants is as follows:

S.No.	Heads of Account	Amount awarded
1.	Loss of Dependency	Rs.9,45,000/-
2.	Loss of Consortium	Rs.1,76,000/-
3.	Loss of Estate	Rs.16,500/-
4.	Funeral Expenses	Rs.16,500
Total amount:		Rs.11,54,000/-

[6] 2018 ACJ 2782

21. As the Tribunal awarded interest @ 7.5 % per annum from the date of petition, this Court considers it appropriate and also awards the interest @ 7.5 % on the enhanced compensation.

22. As there is no restriction to award compensation exceeding the claimed amount, as the function of the Tribunal / Court is to award just compensation which was reasonable, as per the Judgments of the Hon'ble Apex Case in **Nagappa v. Gurudayal Singh**[7] and in **Ram la v. National Insurance Company Limited**[8], the claimants are entitled to a total compensation of Rs.11,54,000/- along with interest @ 7.5 % per annum on the enhanced amount. The same shall be paid by the Insurance Company within a period of two (02) months from the date of receipt of a copy of this order. The amount of compensation if any paid to the claimants, shall be deducted out this amount.

23. In the result, the M.A.C.M.A.No.3150 of 2011 filed by the Insurance Company is dismissed and the appeal filed by the claimants vide M.A.C.M.A.No.1011 of 2010 is allowed, awarding compensation of Rs.11,54,000/- with interest @ 7.5 % per annum on the enhanced compensation. The same shall be paid by the Insurance Company within a period of two(02) months from the date of receipt of a copy of this judgment. The amount of compensation paid to the claimants, if any, shall be deducted out of this amount.

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[7] 2003 ACJ 12
[8] 2019 ACJ 559

The amount shall be apportioned to the claimants in the same proportion as awarded by the Tribunal.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

31st January, 2023
nsk.