THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A.No.1909 OF 2014

JUDGMENT:

This M.A.C.M.A. is filed by the appellants/claimants under Section 173 of the Motor Vehicles Act, aggrieved by the Order and decree, dated 09.03.2011, passed in M.V.O.P.No.897 of 2009 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Spl. Sessions Judge for trial of SCs/STs (PoA) cases-cum-Additional District Judge, Nalgonda (for short "the Tribunal").

2. For the sake of convenience, the parties will be hereinafter referred to as they are arrayed before the Tribunal.

3. Brief facts of the case are that the petitioners filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- on account of the death of Pankerla Srishailam ('the deceased') in the accident. It is stated that on 21.02.2009, the deceased was riding his new Pulsar Motor Cycle with two pillion riders on National High Way No.9 from Hayath Nagar towards his village

Sherigudem. When the deceased reached the Kothaguda stage, the bus of A.P.S.R.T.C. bearing No.AP-10-Z-8055 of Hyderabad-2 depot proceeding from Batasingaram Village towards Pochampally Village came at a high speed and dashed the motorcycle driven by the deceased. The deceased and the two pillion riders sustained grievous injuries and were shifted to Osmania General Hospital, Hyderabad, on the very next day, while undergoing treatment, the deceased succumbed to injuries. The deceased was hale and healthy and aged about 28 years on the date of the accident. He was earning Rs.8,000/- per month doing centring work and also doing cultivation and his overall income per annum was Rs.1,00,000/-. Due to the said accident, the first petitioner lost her life partner and petitioner Nos.2 and 3 lost their father and his affection in their premature age. Therefore, the petitioners claimed compensation of Rs.5,00,000/-.

4. Respondent Nos.2 and 3 were set *ex parte* and respondent No.1 filed counter before the Tribunal stating that the petitioners are not legal heirs of the deceased and they

have not filed any proof to that extent. However, the petition itself is liable to be dismissed for not joining the owner of the motorcycle as a party and the deceased died not by rashness or negligent driving of the bus driver but as the deceased was riding a motorcycle along with two others, which is manufactured only for two persons and therefore, he himself contributed to his fatality. Hence, prayed for the dismissal of the appeal.

5. To prove their case, the petitioners got examined PW.1 to PW.3 and marked Ex.A1 to A10. No oral or documentary evidence was adduced on behalf of the respondents.

6. On appreciating the evidence on record, the Tribunal allowed the claim in part by granting compensation of Rs.4,88,125/- with interest @ 6 % p.a to the petitioners. Questioning the quantum, the present appeal is filed.

7. Heard learned Counsel for the petitioners, learned Counsel for respondent No.1 and perused the record.

8. Learned counsel appearing for the petitioners contended that the Tribunal erred in taking the annual income of the deceased as Rs.50,000/- instead of Rs.1,00,000/- despite ample evidence being present on the record. He further contended that the petitioners are entitled to additional compensation under the head of future prospects. He also contended that the Tribunal ought not to have reduced 25% of the entitled compensation as there is no negligence on part of the deceased and the police investigation proved that the driver of the RTC bus was solely responsible for the accident. Accordingly, prayed to enhance the compensation amount.

9. Opposing the same, the learned Counsel appearing for the 1st respondent contended that the Tribunal was justified in awarding the deducted compensation amount under various heads, *inter alia,* owing to the contributed negligence of the deceased and prayed to dismiss the appeal.

10. Upon careful perusal of the record and in light of the submissions made by both counsel, this Court is of the considered view that the Tribunal ought to have considered the

income of the deceased more than that of which it arrived at. It is an undisputed fact that the deceased was working as a centring worker, bearing an I.D. card issued by the Centring Contractors Association. The Tribunal guessed the annual income of the deceased to be Rs.50,000/- per annum (Rs.4,166/- per month) on the ground that the deceased cannot be considered to be working every day. However, time and again, this Court has considered the minimum monthly earnings of skilled labour to be Rs.6,000/-. As such, this Court is inclined to fix the monthly earnings of the deceased @ Rs.6,000/- per month. The Tribunal did not add future prospects to the income of the deceased and the same exercise would be done, including enhancing compensation under different heads, as follows:

The petitioners were granted Rs.4,88,125/- and the same is interfered with in the following manner:

Head	**Amount arrived at by the Tribunal**	**Amount arrived at by this Court**
Salary of deceased	Rs.4,1666/- p.m	Rs.6,000/- p.m
Annual income	Rs.50,000/- (Rs.4,1666/- x 12)	Rs.72,000/- (Rs.6,000 x 12)
Future prospects	Nil	Rs.28,800/- (40% to

		be taken as per *Pranay Sethi)*
Annual Income + Future prospects	Rs.50,000/- + Nil	Rs.1,00,800/-
Deduction towards personal expenses	Rs.12,500/- (Mistakenly deducted 1/4th)	Rs.33,596/- (1/3rd deduction)
Age Multiplier	17	"17" (As per *Sarla Verma)*
Loss of dependency	Rs.6,37,500/- (37,500/- x 17) excluding future prospects.	**Rs.11,42,468/-** (Rs.67,204/- x 17) including future prospects
Loss of Estate	Rs.5,000/-	**Rs.16,500/-** (Rs.15,000/- + 10% as per *Pranay Sethi)*
Funeral Expenses	Nil	**Rs.16,500/-** (Rs.15,000/- + 10% as per *Pranay Sethi)*
Loss of Spousal Consortium	Rs.5,000/-	**Rs.44,000/-** (Rs.40,000/- + 10% as per *Pranay Sethi)*
Loss of Parental Consortium	Nil	**Rs.80,000/-** (Rs.40,000/- to petitioner No.2 and 3*)*
Total	Rs.6,47,500/- **But awarded Rs.4,88,125/-** due to deduction of 25% owing to deceased's negligence.	Rs.12,95,468/- **But awarded Rs.9,71,601/-** due to deduction of 25% owing to the deceased's negligence.

11. With regard to the contributory negligence at 25% attributed against the deceased, the Tribunal arrived at such a conclusion keeping in view that the deceased was riding the motorcycle carrying two pillion riders. The Tribunal rightly relied upon the decision of this Court in ***United India***

Insurance Co., Ldt. Vs. V.K. Anjaiah[1] wherein the culpability in causing the accident was fixed at 75% on the part of the driver of the offending vehicle and 25% on the part of the deceased riding the scooter with two pillion riders. As the above mentioned case is similar to that of the case at hand, there is no fault in attributing 25% negligence to the deceased in order to deduct compensation. In all, the petitioners are entitled to Rs.12,95,468/- **but only awarded Rs.9,71,601/-** due to deduction of 25% owing to the deceased's negligence.

13. Though the claimed amount is Rs.5,00,000/-, invoking the principle of just compensation, and in view of the law laid down by the Hon'ble Supreme Court in ***Rajesh vs. Rajbir Singh***[2], this Court is empowered to grant compensation beyond the claimed amount.

14. Accordingly, the M.A.C.M.A. is allowed by enhancing the compensation awarded by the Tribunal from Rs. 4,88,125/- **to Rs.9,71,601/-** (Rupees Nine Lakh, Seventy One Thousand Six Hundred and One Rupee only) with interest at 7.5% per annum from the date of filing of the petition till the date of

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[1] 2004 (4) ALD 444.
[2] MANU/SC/0480/2013

realization. The 1st respondent shall deposit the said compensation amount together with interest and costs within a period of two months from the date of receipt of a copy of this judgment. The compensation amount shall be apportioned by the petitioners in the ratio and manner as directed by the Tribunal. However, the petitioners are directed to pay the deficit Court fee on the enhanced compensation. There shall be no order as to costs.

As a sequel of which, miscellaneous petitions, if any pending, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

1st day of March, 2023

PNS