THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. No.1121 of 2009

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the judgment dated 12.08.2008 in M.V.O.P.No.2944 of 2005 by V Additional Metropolitan Sessions Judge – cum – XIX Additional Chief Judge(Mahila Court), City Criminal Court, Hyderabad, the appellants/claimants preferred this appeal seeking enhancement of the compensation.

2. For the sake of convenience, the parties are hereinafter referred as arrayed before the trial court.

3. The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'MV Act') claiming compensation of Rs.5,00,000/- for the death of the deceased M. Dharmendra Kumar, in a motor vehicle accident. The deceased was alleged to be aged 20 years and that he was working as a car driver on a monthly salary of Rs.4,000/- per month by the date of accident. The claimants stated that on 25.05.2001 at about 8:00 A.M., while the deceased was proceeding in a car bearing No.AP37U5445 as driver from Rallagunda Village to

Vijayawada and when the said car reached Budameru bridge, he stopped his car on the bridge behind a lorry bearing No. KA04A1168 which was already stopped there. At the same time, another lorry bearing No.AP5T4767 came behind the car in a rash and negligent manner with high speed and hit the car due to which the car was crushed between both the lorries and the deceased sustained grievous injuries and while undergoing treatment died on 01.06.2001. Police, Gannavaram registered a case *vide* Crime No. 119 of 2001 under Section 304-A of IPC against the driver of the lorry bearing No.AP5T4767. The claimants claimed compensation of Rs.5,00,000/- from the respondent Nos.1 and 2, owner and insurer of the lorry bearing No.AP5T4767.

4. The respondent No.1 remained ex-parte. The respondent No.2, insurance company filed counter contending that the accident occurred only due to negligent driving of the driver of the car. The driver of the lorry was not having valid driving licence and was not having valid permit at the relevant point of time which amounted to violation of the conditions of the policy, the claim was excessive and prayed to dismiss the petition.

5. Basing on the said pleadings, the Tribunal framed the following issues:

1. "Whether the accident took place on 25.05.2001 at about 8:00 A.M., due to the rash and negligent driving of the lorry bearing No.AP5T4767, by its driver?
2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom?
3. To what relief?"

6. On behalf of the claimants, PWs.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of respondents, RW1 was examined and Ex.B1 was marked.

7. On considering the oral and documentary evidence on record, the Tribunal held that the accident occurred due to the negligent driving of the driver of the lorry bearing No.AP5T4767 and accordingly, awarded an amount of Rs.1,83,000/- with interest of 7% per annum from the date of petition till the date of deposit and held that respondent Nos.1 and 2 were jointly and severally liable to pay compensation.

8. Challenging the same, the claimants preferred this appeal contending that the Tribunal failed to see that the income of the

deceased was Rs.4,000/- per month and failed to consider the deductions properly, wrongly applied the multiplier and granted less amount of interest on the claim amount.

9. Heard the learned counsel for the appellants and the learned counsel for respondent No.2/insurance company.

10. There is no dispute with the observation of the Tribunal on issue No.1 with regard to the accident taking place due to rash and negligent driving of the lorry bearing No.AP5T4767. Hence, there is no reason to interfere with the said finding of the Tribunal.

11. With regard to quantum of compensation concerned, the claimants contented that the deceased was earning Rs.4,000/- per month by working as Driver but had not adduced any evidence with regard to his avocation and income. In the absence of any supporting evidence, the Tribunal had taken the income of the deceased as Rs.3,000/- per month. Considering the date of accident is of the year 2001, this Court does not find any reason to interfere with the observation of the Tribunal with regard to income of the deceased, as there was no supporting evidence filed by the claimants.

12. However, as per the judgment of the Hon'ble Apex Court in **National Insurance Co. Ltd vs Pranay Sethi**[1]**,** the claimants are also entitled to an addition of 40% towards future prospects. Therefore, the monthly income of the deceased comes to Rs.4,200/- = Rs.3,000 + Rs.1,200/- (40% of Rs.3,000/-).

13. As the deceased is an unmarried person, 50% is to be deducted towards his personal expenses, as per the judgment of the Hon'ble Apex Court in **Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.**[2] But the Tribunal deducted 1/3rd of his income which need to be corrected. After deducting 50% towards personal expenses, the monthly income of the deceased would come to Rs.2,100/-.

14. The multiplier is to be taken as per the age of the deceased, but not as per the age of the mother of the deceased, as per the judgment of the Hon'ble Apex Court in **Pranay Sethi's** case (supra). Hence, the multiplier 18 is taken, considering the age of the deceased as 20 years, as per the judgment of the Hon'ble Apex Court in

[1] 2017 ACJ 2700
[2] 2009 ACJ 1298

Sarala Verma Case. Adopting the multiplier 18, the total loss of dependency would come to Rs.4,53,600/- (Rs.2,100/- x 12 x 18).

15. As per the judgment of the Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram & Ors.**[3]**,** an amount of Rs.40,000/- each is awarded towards filial consortium, to claimant Nos.1, 2 and 3. An amount of Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses as per the judgment of the Hon'ble Apex Court in **Pranay Sethi case**. As it was held that there should be a 10% increase on conventional heads for every three years, an amount of Rs.44,000/- each is awarded towards loss of consortium and Rs.16,500/- is awarded towards loss of estate and Rs.16,500/- is awarded towards funeral expenses.

16. Therefore, the claimants are entitled to the compensation as follows:-

1.	Loss of dependency	Rs. 4,53,600
2.	Filial consortium (Rs.44,000 x 3)	Rs. 1,32,000
3.	Loss of estate	Rs. 16,500
4.	Funeral Expenses	Rs. 16,500
	TOTAL	**Rs. 6,18,600**

[3] (2018) 18 SCC 130

17. Thus, in all the claimants are entitled to a compensation of **Rs.6,18,600/-** (Rupees Six Lakhs Eighteen Thousand and Six Hundred only) with interest @ 7.5% per annum on the enhancement amount. The enhanced amount shall be apportioned among the claimants in the manner as stated by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

January 27, 2023
SS

THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. No.1121 of 2009

January 27, 2023

SS