aHONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.2370 of 2015 and 2473 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.2370 of 2015 filed by the Insurance Company and M.A.C.M.A.No.2473 of 2015 filed by claimants challenging the quantum of compensation, are directed against the very same order and decree, dated 02.01.2015 made in O.P.No.1757 of 2013 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, 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 brief, are that the claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.12,00,000/- for the death of one K.Srinvias (hereinafter referred to as "the deceased"), who died in the accident that occurred on 02.03.2013. According to the claimants, on the fateful day, while the

deceased was proceeding on his Auto Trolley bearing No.AP 24 W 6096 from Singannagudem towards Bhongir Town and while he was trying to cross the bye-pass road, one Santro Car bearing No.AP 11 AH 0684, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in a rash and negligent manner at high speed and dashed the auto trolley and dragged the same to some distance. As a result, the deceased sustained grievous injuries. Immediately the deceased was taken to Government Hospital, Bhongir, where the doctor declared him brought dead. According to the claimants, the deceased was aged about 25 years and earning Rs.15,000/- per month as he was driver by profession and due to sudden death of the deceased, they lost their source of income, love and affection etc. Therefore, they laid the claim against the respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle.

4. After considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the negligent driving of the crime vehicle

i.e., Santro Car and has awarded an amount of Rs.10,98,000/- with interest at 7.5% per annum from the date of petition till the date of realization to be paid by the respondents jointly and severally. Challenging the same, the present appeals came to be filed by the Insurance Company and the claimants respectively.

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

6. The main contention raised by the learned Standing Counsel for the Insurance Company (appellant in M.A.C.M.A.No.2370 of 2015) is that though the claimants failed to prove the income of the deceased by producing any documentary evidence, the Tribunal erred in taking the income of the deceased at Rs.7,000/- per month. Therefore, the Tribunal has granted excessive and exorbitant compensation, which needs to be reduced.

7. Per contra, learned counsel for the claimants (appellants in M.A.C.M.A.No.2473 of 2015), has submitted that that as per the principles laid down by the Apex Court

in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1], considering the age of the deceased 25 years, future prospects at 40% to the established income of the deceased needs to be added. It is lastly contended that as per the decision of the Apex Court in **Pranay Sethi** (supra), the claimants are entitled to Rs.77,000/- under conventional heads.

8. A perusal of the impugned order would show that the Tribunal having framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Car by its driver and having analyzed the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Santro Car and has answered the issue in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Santro Car.

[1] 2017 ACJ 2700

9. As regards the quantum of compensation is concerned, though the claimants claimed that the deceased was a driver by profession and earning Rs.15,000/- per month, the Tribunal has taken the income of the deceased at Rs.7,000/- per month on the ground that the claimants failed to produce any document to show that the deceased was earning Rs.15,000/- per month. However, the accident occurred while the deceased was driving the Auto trolley, therefore, considering the age and avocation, the Tribunal has rightly fixed the income of the deceased at Rs.7,000/- per month. As rightly contended by the learned counsel for the claimants, the claimants are entitled to addition of 40% towards future prospects to the established income, as per the decision of the Apex Court in **Pranay Sethi** (supra) as the deceased was aged about 25 years. Therefore, future monthly income of the deceased comes to Rs.9,800/- (Rs.7,000/- + Rs.2,800/- being 40% thereof). From this, 1/4th is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***[2] as the

[2] 2009 ACJ 1298 (SC)

dependents are five in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family comes to Rs.7,350/- per month. Since the deceased was 25 years by the time of the accident, the appropriate multiplier is '18' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation*** (supra) but not '17' as adopted by the Tribunal. Adopting multiplier '18', the total loss of dependency comes to Rs.7,350/- x 12 x 18 = Rs.15,87,600/-. In addition thereto, the claimants are also entitled to Rs.77,000/- under the conventional heads as per **Pranay Sethi**'s (supra). That apart, the claimant Nos. 2 & 3, being minor children of the deceased, are entitled to Rs.40,000/- each under the head of parental consortium as per the decision of the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others**[3]. Thus, in all the claimants are entitled to Rs.17,64,600/-.

[3] (2018) 18 SCC 130

10. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.12,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

11. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[4] and ***Nagappa Vs. Gurudayal Singh***[5], the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

12. Accordingly, while dismissing M.A.C.M.A.No.2370 of 2015 filed by the Insurance Company, M.A.C.M.A.No.2473 of 2015 filed by the claimants stands allowed by enhancing

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[4] (2011) 10 SCC 756
[5] 2003 ACJ 12 (SC)

the compensation amount awarded by the Tribunal from Rs. 10,98,000/- to Rs. 17,64,600/-. The enhanced amount shall carry interest at 6% per annum from the date of filing of the O.P. till the date of realization. The claimants are directed to pay Deficit Court Fee on the enhanced amount. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the compensation is two months from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw their respective share amounts without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

M.G.PRIYADARSINI, J

19.01.2023
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HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

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DATE: -01-2023