

THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.Nos.252 of 2019 and 2092 of 2019

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.252 of 2019 filed by the claimants and M.A.C.M.A.No.2092 of 2019 filed by the Insurance Company assailing the quantum of compensation, are directed against the very same order and decree, dated 05.11.2018 made in M.V.O.P.No.2334 of 2015 on the file of the Chairman, the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad (for short “the Tribunal”).

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

3. Brief facts of the case are that the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1989 against the respondents claiming compensation of Rs.12,00,000/- for the death of V. Manemma (hereinafter referred to as “the deceased”), in the motor vehicle accident that occurred on 13.07.2015. According to them, on the fateful day, at 10:30 a.m., while the deceased was proceeding towards Fire Station on N.H. No. 65, Patancheru by walk, the offending vehicle i.e., Bus bearing NO. TS 15UA 3299, owned by respondent No. 1, insured with respondent No. 2, being driven

by respondent No. 3 in a rash and negligent manner at high speed, dashed the deceased, as a result of which, the deceased fell down, sustained grievous injuries and died at Government Hospital, Sangareddy while undergoing treatment on the same day. According to the claimants, the deceased was 48 years, working as coolie and earning Rs.9,000/- per month. Therefore, they laid the claim-petition against the respondent Nos.1 to 3, seeking compensation of Rs.12.00 lakhs.

4. Before the Tribunal, while the respondent Nos. 1 & 3 remained ex parte, respondent No. 2, Insurance Company, contested the claim petition by filing counter. Considering the claim and the counter filed by the insurance company, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the M.V.O.P. awarding compensation of Rs.5,38,000/- with 7.5% interest per annum to be paid by the respondent Nos.1 to 3 jointly and severally.

5. Heard the learned counsel for the claimant and the learned Standing Counsel for the insurance company. Perused the material available on record.

6. The only contention of the learned counsel for the claimants (appellants in MACMA No. 252 of 2019) is that though the claimants have asserted that the deceased was earning Rs.9,000/- per month as a coolie, in the absence of any

contra evidence adduced by the Insurance Company, the tribunal ought not to have restricted the same to Rs.3,600/- per month and the tribunal at least ought to have fixed the monthly income of the deceased at Rs.5,000/-.

7. On the other hand, the learned Standing Counsel for the Insurance Company (appellant in MACMA No. 2092 of 2019) has contended that the tribunal did not consider the evidence brought on record in proper perspective and erroneously held that the accident had occurred due to the rash and negligent driving of the driver of the bus. In fact, the accident took place due to the contributory negligence on the part of the deceased, who was walking on the road without observing the traffic on the road and therefore, the tribunal ought to have apportioned contributory negligence on the part of the deceased also. As regards the quantum of compensation, it is contended that in the absence of any proof as to the income of the deceased, the tribunal has rightly taken the monthly income of the deceased at Rs.3,600/-.

8. It is the main contention of the learned Standing Counsel for the appellant-Insurance Company that the accident occurred due to the contributory negligence even on the part of the deceased and therefore, the tribunal ought to have apportioned contributory negligence. As seen from the record, Ex.A.1, FIR,

was registered against the driver of the crime vehicle. Further, after due investigation into the crime, police laid the charge sheet, Ex.A.2 against the driver of the offending vehicle stating that the accident occurred due to the rash and negligent driving of the offending vehicle and the driver was charged for the offence under Sections 304-A IPC. That apart, P.W.2, the eyewitness to the accident, clearly stated that the accident occurred only due to the rash and negligent driving of the bus by its driver. The Insurance Company did not take any steps to summon the driver of the offending bus to prove that there was contributory negligence on the part of the deceased, who is the best person to speak in this regard. Further, no contra evidence was elicited in the cross-examination of P.W. 2, eyewitness to the accident. Therefore, considering the evidence of P.W.2 and Exs.A.1 & A.2, FIR and charge sheet, the tribunal has rightly held that the accident occurred only due to the rash and negligent driving of the bus by its driver, which needs no interference by this Court.

9. As regards the quantum of compensation, though it is the case of the claimants that the deceased was coolie and earning Rs.9,000/- per month, the tribunal has fixed the income at Rs.3,600/- per month, which is meagre in the opinion of this Court. Considering the prevailing rate of wages at the relevant point of time, this Court is inclined to fix the monthly income of

the deceased at Rs.5,000/-. Since the deceased was aged about 48 years, the claimants are entitled to addition of 25% towards future prospects, as per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others**¹. Therefore, monthly income of the deceased comes to Rs.6,250/- (Rs.5,000/- + Rs.1,250/-). Since there are three dependants, after deducting 1/3rd towards personal and living expenses of the deceased therefrom, the net monthly contribution of the deceased to the family comes to Rs.4,167/- (Rs.6,250 – Rs.2,083 = Rs.4,167). As the age of the deceased was 48 years at the time of the accident, the appropriate multiplier is '13' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation**². Adopting multiplier 13, his total loss of dependency comes to **Rs.6,50,052/-** (Rs.4,167/- x 12 x 13 = Rs.6,50,052/-). The claimants are also entitled to **Rs.77,000/-** under the conventional heads as per **Pranay Sethi's** case (supra). Thus, in all the claimants are entitled to **Rs.7,27,052/-** towards just compensation.

10. In the result, while dismissing M.A.C.M.A.No.2092 of 2019 filed by the insurance company, the M.A.C.M.A.No.252 of 2019 filed by the claimants is partly allowed enhancing the compensation awarded by the Tribunal from Rs.5,38,000/- to **Rs.7,27,052/-**. The enhanced amount shall carry interest at 6%

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

p.a. from the date of the filing of the O.P. before the tribunal till the date of realization, payable by respondent Nos. 1 to 3 in the M.V.O.P. jointly and severally. Time to deposit the amount is two months from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the amount without depositing any security. It is made clear that since the claimant No. 1 is no more, his share of compensation shall be distributed equally between the claimant Nos. 2 & 3. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

27.01.2023
gms

JUSTICE M.G.PRIYADARSINI

THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.Nos.252 of 2019 and 2092 of 2019

27.01.2023

gms