THE HONOURABLE DR.JUSTICE G.RADHA RANI

M.A.C.M.A. NOS. 5098 OF 2008 & 3759 OF 2011

COMMON JUDGMENT:

M.A.C.M.A.No.5098 of 2008 is filed by the claimants seeking enhancement of compensation for the death of the deceased Sri B.Ravinder, aggrieved by the Judgment dated 20.09.2005 in O.P.No.414 of 2004 on the file of the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case cum Additional Family Court cum XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad.

2. M.A.C.M.A.No.3759 of 2011 is filed by the New India Assurance Company Limited aggrieved by the same Judgment in O.P.No.414 of 2004 contending that the compensation of Rs.5,90,112/- with interest @ 6% per annum awarded to the claimants is excessive.

3. Heard the learned counsel for the appellants and the learned counsel for the respondents in both the MACMAs.

4. For the sake of convenience, the parties are referred as in O.P.No.414 of 2004.

5. The case of the claimants was that on 27.05.2003 at about 7:00 AM, while the deceased Sri B.Ravinder along with his wife Smt. Rajeswari @ Vajramma were proceeding on a Hero Honda Motor Cycle bearing No. AP 11 L 948 from Chandur of Nalgonda District to Hyderabad, after attending the marriage of their close relative and when reached Tammalonigudem Village in the limits of PS Yacharam, Cyberabad, an unknown vehicle driven by its driver in a rash and negligent manner with high speed, hit their vehicle from its behind due to which both Sri B.Ravinder and his wife died on the spot. It was also reported in the complaint filed by the brother of the deceased that the wife of the deceased was wearing 30 tulas to gold ornaments worth of Rs.2,00,000/- at the time of accident and the same were also found missing after the accident. A case was registered against the driver of an unknown vehicle vide Crime No.44 of 2003 by PS Yacharam under Section 304-A of IPC. Subsequently, Police filed charge-sheet against the driver of the lorry bearing No.AP 12 T 4995.

6. The claimants filed a petition under Sections 166 and 163-A of Motor Vehicles Act, 1988 claiming compensation of Rs.10,00,000/- with interest @ 24% per annum. The claimants 1 to 3 were the children of the deceased B.Ravinder and his wife Rajeswari. The claimant No.4 was the mother of the

deceased B.Ravinder. The claimants 2 and 3 being minors, were represented by their maternal uncle.

7. The 1st respondent, the owner of the lorry bearing No.AP 12 T 4995 remained ex-parte.

8. The 2nd respondent, The New India Assurance Company Limited filed its counter disputing the involvement of the offending vehicle and contended that the driver of the lorry was not having valid driving license and permit at the time of the accident. They had also disputed the age, occupation and income of the deceased and contended that the claim was bad for non-joinder of necessary party i.e., insurer of the motor cycle bearing No.AP 11 L 948 on which the deceased travelled at the time of accident. They also contended that the claim was excessive and exorbitant.

9. During the course of trial, the claimants examined PWs 1 to 4 and got marked Exs.A.1 to A.15. The respondent No.2 had not adduced any oral evidence, but got marked the copy of the policy as Ex.B.1.

10. On considering the evidence of PW.2, who stated that he witnessed the accident while going in a jeep behind the motor cycle of the deceased and noted the number of the lorry and informed on phone to PS Ibrahimpatnam about the

accident on their way to Hyderabad, but, due to the serious condition of passenger in their jeep, they could not stop their vehicle on the said date, but informed on the next day about the accident in PS Yacharam, and the Police cited them as eye-witnesses in the charge-sheet and no rebuttal evidence was adduced by the respondent No.2 to the said evidence, the Tribunal believed his evidence and opined that the accident occurred due to the rash and negligent driving on the part of the driver of the lorry bearing No.AP 12 T 4995.

11. The Insurance Company preferred this M.A.C.M.A.No.3759 of 2011, disputing the quantum of compensation awarded to the claimants, but not with regard to the involvement of the crime vehicle. As such, there is no dispute with regard to the observation of the Tribunal on this aspect. Both the claimants as well as the Insurance Company filed these appeals disputing the quantum of compensation awarded by the Tribunal.

12. The contention of the claimants was that the Tribunal awarded such compensation without appreciating the oral and documentary evidence on record properly. The Tribunal had taken the age of the deceased on higher side and wrongly granted less compensation towards funeral expenses, transportation, extra nourishment, loss of amenities, etc., and had taken the income of the deceased on lower side. The multiplier was also taken on lower

side and failed to appreciate the evidence of PWs 3 and 4 properly and wrongly fixed the earnings of the deceased on the lower side. The contribution to the family was also taken on lower side and wrongly granted less rate of interest.

13. The contention of the learned counsel for the Insurance Company in M.A.C.M.A.No.3759 of 2011 was that there was no reliable evidence in proof of the income of the deceased, the learned Judge ought to have applied multiplier 12 instead of 14 in view of the judgment of the Hon'ble Apex Court in **Tamilnadu State Road Transport Corporation v. Rajapriya and Others**[1].

14. The main dispute is with regard to the income of the deceased. As per the contention of the claimants, the deceased was the proprietor of M/s.Sri Lakshmi Traders. He also made an application to the Commercial Tax Department for registration of his business on 18.09.2002 vide Ex.A.11. The claimants also filed the PAN card of the deceased marked under Ex.A.12. Their further contention was that while the deceased was managing the rice business, he was also working as an employee with M/s.Abinandana Traders and was receiving salary of Rs.5,000/- per month. The claimants contended that the deceased was earning Rs.10,000/- per month from his rice trading business and was earning

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[1] (2005) 6 SCC 236

Rs.5,000/- per month by working as an employee with M/S.Abinandana Traders.

15. They got examined PW.3 who stated that he was working as an employee with the deceased for the past one year prior to his death. The deceased was purchasing paddy from ryots and used to get it milled and sell the same and he was paid Rs.2,500/- per month towards his salary. The claimants also examined the Proprietor of M/s.Abinandana Traders as PW.4, who issued the salary certificate, marked under Ex.A.15. PW.4 stated that the deceased worked as a clerk in his shop from 01.05.2002 to 27.05.2003 and he was paid Rs.5,000/- per month towards his salary. As per PW.4, the deceased was writing the accounts, attending the bank work and other related works of his business.

16. The Tribunal considering that if at all the deceased had established his own business, he would not have continued as clerk with PW.4, opined that the evidence adduced before it was not inspiring confidence with regard to the income of the deceased, but, however considered his income as Rs.5,000/- per month on a guesswork.

17. Though the oral evidence of PWs. 3 and 4 was not believed by the Tribunal as not satisfactory, the application filed before the Commercial Tax Department dated 18.09.2002 ought to have been taken into consideration, as

the said application was made much prior to his death. Hence, considering the same, it can be believed that the deceased was doing business in the name of M/s.Sri Lakshmi Traders at Kishan Bagh, Bahadurpura, Hyderabad. The occupation of the deceased was also mentioned as business man in the inquest report marked under Ex.A.3. The deceased was also having own motor cycle of Hero Honda make, as per the RC of the vehicle, marked as Ex.A.13. As per the complaint given by the brother of the deceased marked under Ex.A.1, the wife of the deceased was also wearing 30 tulas of gold at the time of the accident which was found missing. Hence, the financial capacity of the deceased on a guesswork can be assessed as Rs.10,000/- per month. The Hon'ble Apex Court in **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited**[2], considered the income of a vegetable vendor in the year 2008 as Rs.6,500/- per month. The accident in the present case is pertaining to the year 2003. Considering that the deceased was proprietor of M/s.Lakshmi Traders, having a own motor cycle and the financial status enjoyed by him in the society, this Court considers it reasonable to assess his earning capacity as Rs.10,000/- per month.

[2] 2014 ACJ 627

18. As per the Constitutional Bench Judgment of the Hon'ble Apex Court in **M/s. National Insurance Company Limited v. Pranay Sethi**[3], wherein it was held that, *even in case of the persons who were self-employed, an addition of percentage to be considered towards their future prospects while computing the income* and considering the Judgment of the Hon'ble Apex Court in **Hema Raj v. Oriental Insurance Company Limited and Others**[4], wherein it was held that, *where minimum income is determined on guesswork, the percentage of income for future prospects also to be added for the same,* considering the age of the deceased as 42 years as per Ex.A.14, the Driving License of the deceased, an addition of 25% is added towards the future prospects of the deceased. Hence, the income of the deceased including his future prospects is considered as Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-) = Rs.12,500/-. Considering the number of surviving family members as four, as per the judgment of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[5]**,** one-fourth is deducted towards the personal expenses of the deceased. On such deduction, the amount comes to Rs.9,375/- {(Rs.12,500/- (-) Rs.3,125/- (1/4th of Rs.12,500/-)}. Hence the loss of dependency can be calculated as Rs.9,375 X 12 X 14 = Rs.15,75,000/-

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[3] 2017 ACJ 2700
[4] 2018 ACJ 5
[5] 2009 ACJ 1298

19. The learned counsel for the claimants relied upon the judgment of the Hon'ble Apex Court in **Magma General Insurance Company Limited v. Nanu Ram and Others**[6], wherein it was held that:

> *"not only the wife is entitled to spousal consortium, but children were also entitled to parental consortium and parents were entitled to filial consortium and an amount of Rs.40,000/- is awarded to each of the claimants under the said head."*

20. In the present case also, as the claimants 1 to 3 are the children of the deceased, they were entitled to parental consortium upon the pre-mature death of their father towards loss of parental aid, protection, affection, guidance, discipline and training. As the claimant No.4 is the mother of the deceased, she is also entitled for filial consortium, for the death of her son in the accident, as the greatest agony for a parent is to lose her children during her lifetime

21. The learned counsel for the appellants - claimants also relied upon the Judgment of the Hon'ble Apex Court in **Anjali and Others v. Lokendra Rathod and Others**[7], on the aspect that:

> *"there should be 10% increase on the conventional heads for every three (03) years and the High Court erred in not granting the same."*

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[6] 2018 ACJ 2782
[7] 2022 SCC OnLine SC 1683

Hence, it is considered fit to award an amount of Rs.40,000/- + 10% of Rs.40,000/- = Rs.44,000/- to each of the claimants under the head 'loss of consortium'.

22. The learned counsel for the appellant – claimants submitted that claimant No.4 died during the pendency of the appeal and relied upon the judgment of the High Court of Punjab and Haryana at Chandigarh in **Paramjit Kaur and Others v. Gurudev Singh & Others**[8], wherein also the parents of the deceased expired and the learned counsel for the Insurance Company contended that the amount under the head of 'loss of consortium' cannot be awarded, it was held that *the claim of the parents for grant of filial consortium was crystallized by the date of accident itself and such claim which already stood crystallized cannot be negated by the subsequent death of the parents.* The Punjab and Haryana High Court relied upon the judgment of the Hon'ble Apex Court in **Kirti v. Oriental Insurance Company Limited**[9], to hold as such. In **Kirti Case** (9 supra), the Hon'ble Apex Court held that the subsequent death of the deceased dependant mother ought not to be a reason for reduction of Motor Accident compensation. Claims and legal liabilities would be crystallized by the date of accident itself and changes post thereto ought not to ordinarily effect pending proceedings.

[8] (2021) ACJ 1945
[9] 2021 ACJ 1

Hence, considering the above judgments, filial consortium of Rs.44,000/- is also awarded to claimant No.4.

23. In the **Pranay Sethi's Case** (3 supra), it was held that an amount of Rs.15,000/- need to be awarded towards loss of estate and Rs.15,000/- towards funeral expenses with enhanced rate of 10% for every 3 years. Hence, the claimants are also entitled to an amount of Rs.16,500/- each{Rs.15,000/- + Rs.1,500/- (10% of Rs.15,000/-)} under the head 'loss of estate' and towards 'funeral expenses'.

24. The Tribunal awarded interest @ 6% per annum from the date of petition. But considering the judgment of the High Court of Punjab and Haryana at Chandigarh in **Paramjit Kaur and Others v. Gurudev Singh & Others**[10], wherein also the claim petition filed in the year 2000 was decided vide award dated 01.04.2002, it was held that:

> *"It was not in dispute that the prevailing rate of interest at that point of time was 9% approximately on fixed deposits. Be that as it may, it cannot be lost sight that the interest rate thereafter have dropped. As of date, the prevailing rate of interest is 6% per annum approximately on fixed deposits and going up to 7.5% for senior citizens. By adopting a middle path and keeping the equities in mind, the ends of justice would be served of interest at the rate of 7.5% per annum is awarded on the enhanced compensation.*

[10] (2021) ACJ 1945

25. This Court also considers that the rate of interest @7.5% per annum is reasonable to be awarded on the enhanced amount.

26. As such, the claimants are entitled to an amount under the various heads as follows:

S. No.	Various Heads	Amount entitled (in Rs.)
1.	Loss of Dependency	15,75,000/-
2.	Loss of Consortium	1,76,000/-
3.	Loss of Estate	16,500/-
4.	Funeral Expenses	16,500/-
Total amount entitled (in Rs.)		17,84,000/-

27. As per the Judgment of the Hon'ble Apex Court in **Ramla and Others v. National Insurance Company Limited and Others**[11], considering the object of the Motor Vehicle Act, as it is a beneficial and welfare legislation, it was held that courts are duty-bound to award just compensation. Hence, though the claimants claimed an amount of Rs.10,00,000/- towards compensation, a total compensation of Rs.17,84,000/- is awarded along with interest @ 7.5% on the enhanced amount and the same shall be paid by the Insurance Company within a period of two months from the date of receipt of copy of this order. The amount of compensation if any paid to the claimants shall be deducted out of the enhanced compensation.

[11] 2019 ACJ 559

28. In the result, the M.A.C.M.A.No.3759 of 2011 filed by the Insurance Company is dismissed and the M.A.C.M.A.No.5098 of 2008 filed by the claimants is allowed, awarding a total compensation of Rs.17,84,000/- along with interest @ 7.5% on the enhanced amount and the same shall be paid by the Insurance Company within a period of two 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 of the enhanced compensation. The share of claimant No.4 shall be apportioned to claimants 1 to 3 equally. The claimants 1 to 3 are entitled to be apportioned the enhanced amount in the manner stated by the Tribunal.

Miscellaneous applications pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

23rd January, 2023
nsk.