

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA
AND
HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI
M.A.C.M.A.Nos.1687 OF 2010 AND 2212 OF 2013

COMMON JUDGMENT: (Per Justice M.G.Priyadarsini)

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1687 of 2010, filed by the Insurance Company and M.A.C.M.A.No.2212 of 2013 filed by claimants challenging the quantum of compensation, are directed against the very same award and decree, dated 08.06.2010 made in O.P.No.2202 of 2006 on the file of the V Additional Metropolitan Sessions Judge, Mahila Court, 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 laid a claim under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,00,000/- for the death of one Ch.Venkata Krishna Rao (hereinafter referred to as "the deceased"), who died in the accident that occurred on 08.03.2006. According to the claimants, on the fateful day,

while the deceased was proceeding in a Tata Indica Car bearing No.WB 02 T 7410 towards Haldia from Kolkata side and when he reached the village limits of Raksachok, one Truck bearing No.WP 29 1038 came in opposite direction in a rash and negligent manner at high speed and dashed the Tata Indica Car. As a result, the deceased and the driver of the Car sustained grievous injuries and the deceased died while undergoing treatment in Popular Nursing Home at Mechada. On a complaint, a case in Crime No.24 of 2006 was registered against the driver of the Truck. According to the claimants, the deceased was working as Vice President at G.M.R. Energy Limited, Bangalore and used to get salary of Rs.35,00,000/- per annum apart from house rent allowance, transport allowance, special pay, children educational allowance, leave travel concession and medical reimbursement etc. On account of the sudden death of the deceased, the claimants, who are wife and son of the deceased, lost their source of income and earnings of the deceased. Therefore, they laid the claim against the respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle i.e., Truck bearing No.WB 29 1038.

4. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2, insurance company filed counter and additional counter denying all the averments made in the claim-petition, including the manner in which the accident took place, age, avocation and earnings of the deceased. It is specifically contended that the accident occurred only due to the negligent driving by the driver of the Car in which the deceased was traveling and therefore, the claim-petition is bad for non-joinder of necessary parties i.e., owner and insurer of the Car. It is further contended that the deceased was not appointed as Vice President at G.M.R. Energy Limited and he was not drawing Rs.35,00,000/- per annum as the name of the deceased and his occupation and the payment of salary were not shown in the balance sheet of the company for the financial year 2005-2006. It is further contended that since there is no mention about the payment of Rs.6,56,763/- for 72 days as mentioned in the payment slip of the deceased, it cannot be considered under law.

5. After considering claim and counter filed by the respondent No.2 and 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., Truck and has awarded an amount of Rs.1,76,96,656/- with interest at 7.5% per annum from the date of petition till the date of realisation. Challenging the same, the present appeals came to be filed by the Insurance Company and the claimants respectively.

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

7. The main contention raised by the learned Standing Counsel for the Insurance Company (appellant in M.A.C.M.A.No.1687 of 2010) is that although the claimants failed to prove the income of the deceased by producing cogent documentary evidence, the Tribunal erred in taking the income of the deceased at Rs.35,00,000/- per annum. Therefore, the Tribunal has granted excessive and exorbitant compensation, which needs to be reduced. It is

further contended that the Tribunal erred in not deducting income tax from the salary of the deceased.

8. Per contra, learned counsel for the claimants (appellants in M.A.C.M.A.No.2212 of 2013), has submitted that the Tribunal erred in adopting the multiplier '8' instead of '13' as the deceased was aged about 50 years at the time of the accident. It is further submitted 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 as 50 years, future prospects at 15% 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's case*** (supra), the claimants are entitled to Rs.77,000/- under conventional heads. Learned counsel appearing for the claimants relied upon the judgments of the Apex Court in ***Shashikala and others v. Gangalakshamma and***

¹ 2017 ACJ 2700

another² and ***United India Insurance Co. Ltd. V. Farida Sarosh Poonawala and others***³.

9. A perusal of the impugned order discloses that the Tribunal having framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Truck by its driver and having considered the evidence of P.W.2, eyewitness to the accident, who was also co-traveller in the Car, coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving by the driver of the Truck bearing No.WB 29 1038 and has answered the issue in favour of the claimants and against the respondents. Therefore, we see no reason to interfere with the finding of the Tribunal in holding that the accident occurred due to the rash and negligent driving of the driver of Truck.

10. Coming to the quantum of compensation, a perusal of the material available on record discloses that the deceased was a practicing Chartered Accountant and he joined

² 2015 ACJ 1239

³ 2022 ACJ 1181

G.M.R. Vasavi Industries Limited as Director and he worked as such from 1992 to September, 1999 and then he moved to one of the G.M.R. group companies i.e., Sri Varalakshmi Jute and Wine Mills Private Limited and worked there as Managing Director from September, 1999 to July, 2003 and then he was promoted to Joint Managing Director in Administration and Finance with G.M.R. Industries Limited. Ex.A25-appointment letter, dated 10.12.2005 discloses that the deceased was appointed as Vice President, Finance and Accounts at G.M.R. Energy Limited, head office at Bangalore, which was supported by the evidence of P.W.3, the Chief H.R. Officer of G.M.R. group of companies. P.W.4, the Associate Manager, H.R. in G.M.R. Energy Limited, Bangalore, has categorically deposed before the Court that the deceased was working as Vice President from December, 2005 till his death which was occurred on 08.03.2006 and as per Ex.A41, salary slip, the deceased was being paid Rs.6,56,763/- for 72 days and out of said salary, after deducting an amount of Rs.1,14,393/- towards income tax TDS, net amount of Rs.5,42,370/- was credited to the bank account of the

deceased. Therefore, the Tribunal erred in fixing the income of the deceased at Rs.35,00,000/- per annum and applied the multiplier without deducting income tax. However, considering the evidence of P.Ws.3 and 4 coupled with Ex.A25, appointment order and Ex.A41, salary slip, this Court is inclined to fix the income of the deceased at Rs.2,25,987/- per month after deducting T.D.S. as deducted by the employer of the deceased. Further, as rightly contended by the learned counsel for the claimants, the claimants are entitled to addition of 15% 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 50 years and the deceased was having fixed permanent salary. Therefore, future monthly income of the deceased comes to Rs.2,50,885/- (Rs.2,25,987/- + Rs.33,898/- being 15% thereof). From this, 1/3rd is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**⁴ as the dependents are two in number. After deducting 1/3rd amount towards personal and living

⁴ 2009 ACJ 1298 (SC)

expenses of the deceased, the net contribution of the deceased to the family comes to Rs.1,73,256/- per month. Since the deceased was 50 years by the time of the accident, the appropriate multiplier is '13' as per the decision in **Sarla Verma** (supra) but not '8' as adopted by the Tribunal. Adopting multiplier '13', the total loss of dependency comes to Rs.1,73,256/- x 12 x 13 = Rs.2,70,27,936/-. In addition thereto, the claimants are entitled to Rs.77,000/- under the conventional heads as per the decision in **Pranay Sethi** (supra). Thus, in all, the claimants are entitled to Rs.2,71,03,936/-, but as per Ex.B5, since claimant No.1 had already received Rs.10,00,000/- under mediclaim policy, as observed by the Tribunal, after deducting the same, they are entitled to Rs.2,61,03,936/-.

11. In the result, while dismissing M.A.C.M.A.No.1687 of 2010 filed by the Insurance Company, M.A.C.M.A.No.2212 of 2013 filed by the claimants stand allowed by enhancing the compensation amount awarded by the Tribunal from Rs. 1,76,96,656/- to Rs.2,61,03,936/-. The enhanced

amount shall carry interest at 7.5% per annum from the date of the order passed by the Tribunal till the date of realization. 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 claimants are permitted to withdraw half of their respective share amounts without furnishing any security and the remaining amount shall be kept in F.D.R. in any Nationalised Bank for a period of three years. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

DR. C. SUMALATHA, J

M.G.PRIYADARSINI, J

20.02.2023
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