THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.Nos.488 of 2018 and 1647 of 2018

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.488 of 2018 filed by the Reliance General Insurance Company Limited and M.A.C.M.A.No.1647 of 2018 filed by the claimants assailing the quantum of compensation, are directed against the very same judgment and decree, dated 12.10.2017 made in M.V.O.P.No.296 of 2016 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (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, 1988 against the respondents claiming compensation of Rs.30,00,000/- for the death of Sudhkar @ Boda Naga Jyothi(hereinafter referred to as "the deceased"), in the motor vehicle accident that occurred on 20.03.2016. According to them, on the fateful day, at about 3.00 p.m., while the deceased was proceeding on his motor cycle bearing No.TS 05 EG 3621 from Nalgonda to Mella Duppalapally village and when he reached near Ramakrishna Mango Garden at the outskirts of Mella Duppalpally village, the offending vehicle i.e., Auto bearing No. AP 24 Y 1058, being driven by its driver in a rash and negligent manner at high speed, came from opposite direction

and dashed the cycle and ran over the body of the deceased. The deceased succumbed to the injuries on the way to the hospital. According to the claimants, the deceased was aged 26 years, working as Lab Technician in Future Diagnostic Center, Nalgonda and earning Rs.18,000/- per month. Therefore, they laid the claim petition against the respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, seeking compensation of Rs.30.00 lakhs.

4. Before the Tribunal, while the respondent No.1 remained ex parte respondent No.2 contested the claim by filing counter *inter alia* disputing the manner of the accident and the claim made by the claimants as excessive.

5. Considering the claim, counter filed by the respondent No.2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the M.V.O.P. awarding total compensation of Rs.19,61,000/- with 7% interest per annum to be paid by the respondent Nos.1 and 2 jointly and severally.

6. The learned Standing Counsel for the Insurance Company (appellant in MACMA No.488 of 2018) has vehemently argued 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 auto. In fact, the accident took place due to the

contributory negligence on the part of the deceased as he was riding the motorcycle negligently and without having any driving licence. Therefore, the Tribunal ought to have apportioned contributory negligence on the part of the deceased also at 50%. It is further contended that even the driver of the auto was not holding any valid driving licence to drive the auto and since there was violation of terms of the policy, the respondent No. 1 alone is liable to pay the compensation and no liability can be fastened on the insurance company. As regards the quantum of compensation, it is contended that the claimants did not file any documentary proof pertaining to age, avocation and income of the deceased. It is lastly contended that though the deceased was Lab Technician even according to the claimants, the Tribunal has erred in adding 50% towards future prospects and it should not be more than 40%.

7. On the other hand, the learned counsel for the claimants (appellants in MACMA No.1647 of 2018) has contended that the claimants have asserted that the deceased was working as Lab Technician, earning Rs.18,000/- per month apart from attending private medical camps and in support thereof, they have also produced Ex.A.7, salary certificate, showing the income of the deceased as Rs.18,000/- per month which has been substantiated with the evidence of employer, P.W.3. However, without there being any contra evidence, the tribunal ought not to have brushed aside the said evidence and the

income of the deceased ought to have been fixed as Rs.18,000/- before adding future prospects. It is lastly contended that the claimant No. 2, being the minor son of the deceased, is entitled to Rs.40,000/- towards parental consortium.

8. Heard the learned counsel for the claimants and the learned Standing Counsel for the Insurance Company. Perused the material available on record.

9. It is the main contention of the learned Standing Counsel for the Insurance Company that the accident occurred due to the contributory negligence even on the part of the deceased as the deceased was negligent in riding the motorcycle 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.6 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 auto by its driver. However, the Insurance Company did not take any steps to summon the driver of the offending vehicle 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.6, FIR and charge sheet, the Tribunal has rightly held that the accident occurred only due to the rash and negligent driving of the auto by its driver, which needs no interference by this Court.

10. As regards the quantum of compensation, it is the case of the claimants that the deceased was working as Lab Technician and used to earn Rs.18,000/- per month. In support thereof, Ex.A.7 Salary Certificate was produced and the employer was also examined as P.W.3. However, a perusal of Ex.A.7 does not disclose anything about registration or authorization of the firm of P.W.3 from any Government Authorities as rightly observed by the tribunal. But the fact remains that the deceased was B.Sc. graduate as seen from Ex.A.10. Furthermore, Ex.A.11 discloses that the deceased underwent training for Medial Lab Technician from 21.05.2012 to 31.05.2013. Ex.A.12 is the certificate of Medical Lab Service issued by the Government in respect of the deceased. Considering these documents, it is established that the deceased was a qualified Lab Technician. Therefore, the fixation of the monthly income of the deceased by the tribunal at Rs.12,000/- by adding future prospects is on lower side in the opinion of this court. Considering Exs.A.10 to A.12, this Court is inclined to fix the monthly income of the deceased at Rs.12,000/-. To this, as the deceased was 26

years, in view of the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1], the claimants are entitled to addition of 40% towards future prospects. Therefore, the future monthly income of the deceased comes to Rs.16,800/- (Rs.12,000/- + Rs.4,800/- being 40% thereof). Since there are four defendants, after deducting 1/4th towards personal and living expenses of the deceased, the net monthly income that was being contributed to the family of the deceased comes to Rs.12,600/- per month. As the age of the deceased was 26 years at the time of the accident, the appropriate multiplier is '17' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation***[2]. Adopting multiplier 17, the total loss of dependency of the claimants comes to Rs.25,70,400/- (Rs.12,600/- x 12 x 17). That apart, the claimants are entitled to Rs.77,000/- under conventional heads as per ***Pranay Sethi's*** case (supra). In addition thereto, the claimant No.2, being the minor child of the deceased, is entitled to Rs.40,000/- towards 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.26,87,400/- towards just compensation. Insofar as the interest awarded by the Tribunal is concerned, the rate of

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[1] 2017 ACJ 2700

[2] 2009 ACJ 1298 (SC)

[3] (2018) 18 SCC 130

interest is hereby reduced to 6% per annum from 7% on the compensation awarded by the Tribunal from the date of petition till realization.

11. In the result, M.A.C.M.A. No. 1647 of 2018 is partly allowed enhancing the compensation awarded by the Tribunal from Rs.19,61,000/- to Rs.26,87,400/- which shall carry interest at 6% per annum from the date of filing of the O.P. till the date of realization payable by the owner of the vehicle and the insurance company. The MACMA No. 488 of 2018 stands allowed in part to the extent of reducing the rate of interest from 7% per annum to 6% per annum. 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. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

27.01.2023
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