THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 3581 of 2019

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 10.10.2018 passed in M.V.O.P.No.188 of 2014 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short "the Tribunal"), the appellant/claimant No.1 preferred the present appeal seeking enhancement of the compensation.

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

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.15,00,000/- for the death of one Odela Shyam (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 15.04.2012. According to the claimants, on 15.04.2012 while the deceased was proceeding on Splendor

Motorcycle bearing No.AP 15 Q 6830 along with his friend V.Srinivas from Korutla to jagtial and when they reached near Railway Bridge situated at the outskirts of Chelgal Village, Jagtial Mandal, one Van bearing No.AP 25 AB 8173, owned by respondent No.2 and insured with respondent No.3, being driven by its driver, respondent No.1, in a rash and negligent manner at high speed, dashed the motorcycle of the deceased from opposite direction, as a result of which, the deceased sustained head injury and died on the spot. It is stated that the deceased was hale and healthy and was earning Rs.10,000/- per month as he was a Tailor and due to sudden demise of the deceased, the claimants, being the wife and father of the deceased, lost their source of income. Therefore, they laid the claim-petition against the respondents, claiming compensation under different heads.

4. After considering the claim and the counters filed by the respondents, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly

allowed the O.P. and awarded compensation of Rs.6,49,000/- with interest at 6% per annum. Aggrieved by the same, the present appeal has been filed by the claimant No.1, seeking enhancement.

5. Heard both sides and perused the material available on record.

6. It is submitted by the learned counsel for the claimant No.1 that though the claimants have established that the deceased was earning Rs.10,000/- per month by examining P.W.3 and marking Ex.P7, the Tribunal erroneously took the income of the deceased at Rs.5,000/- per month which is meagre amount. It is further submitted that the claimants are also entitled to the future prospects and also Rs.77,000/- under conventional heads. It is further submitted that though it was brought to the notice of the Tribunal that claimant No.2, father of the deceased, died on 10.03.2016, the Tribunal has committed grave mistake in apportioning the compensation amount.

7. Per contra, learned Standing Counsel for respondent No.3 sought to sustain the impugned award of the Tribunal contending that considering the learned Tribunal has awarded just and reasonable compensation and the same needs no interference by this Court.

8. The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by the respondents.

9. Insofar as the quantum of compensation is concerned, according to the claimants the deceased was working as Tailor and earning Rs.10,000/- per month. Though P.W.3, employer of the deceased, in his evidence deposed that he has been running REX Tailoring shop at Korutla and the deceased was working with him for the past six years prior to his death, he failed to produce any document such as licence for his shop obtained under A.P. Shops and Establishment Act or Labour Department and therefore, the Tribunal has fixed the income of the deceased at Rs.5,000/- per month, which is very less.

Hence, this Court is inclined to take the income of the deceased at Rs.6,000/- per month. Apart from the same, the claimants are also entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra). Therefore, monthly income of the deceased comes to Rs.8,400/- (Rs.6,000/- + Rs.2400/- = 8400/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***[1]. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.5,600/- per month. Since the age of the deceased was 35 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in ***Sarla Verma v. Delhi Transport Corporation*** (supra). Adopting multiplier '16', the total loss of dependency works out to Rs.5,600/- x 12 x 16 = Rs.10,75,200/-. The claimant No.1 is also entitled to Rs.77,000/- under the conventional

[1] 2009 ACJ 1298 (SC)

heads as per **Pranay Sethi**'s case (supra). During pendency of the claim-petition, since claimant No.2, father of the deceased, died, claimant No.1, wife of the deceased, is entitled to Rs.11,52,200/-.

10. Accordingly, M.A.C.M.A. is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.6,49,000/- to Rs.11,52,200/-. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realization. Respondent No.3 is directed to deposit the said amount within two months from the date of receipt of a copy of this judgment. On such deposit, the claimant No.1 is permitted to withdraw the entire compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

19.01.2023
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

<u>M.A.C.M.A. No. 3581 of 2019</u>

<u>DATE: 19-01-2023</u>