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

M.A.C.M.A.No.1063 of 2014

JUDGMENT:

Dissatisfied with the quantum of compensation awarded in the judgment and decree, dated 19.01.2010 passed in M.V.O.P.No. 566 of 2006 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar (for short "the Tribunal"), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array 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.10,00,000/- for the death of one B. Rama Krishna, husband of claimant No. 1 and father of claimant Nos. 2 & 3 and son of respondent Nos.4 & 5 (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 27.02.2006. According to the claimants, on the fateful day, while the deceased was returning on his motorcycle to his village from

Hastalpuram Village, Medak District, when he reached near Ravella Village, Toopran Mandal, the crime vehicle i.e., Car bearing No. AP 10AJ 6222, owned by respondent No. 1, insured with respondent Nos. 2 & 3, being driven by its driver in rash and negligent manner, dashed the motorcycle, as a result of which, the deceased fell down, sustained multiple injuries and he succumbed to injuries while undergoing treatment at Gajwel Government Hospital. According to the claimants, the deceased was aged 28 years, working as a distributor of Automobile parts with Padmaja Auto Agency at Ramkoti, Hyderabad and earning Rs.5,000/- per month. Therefore, they filed the claim petition against the respondent Nos. 1 to 3 claiming compensation of Rs.10.00 lakhs towards compensation under different heads.

4. Before the tribunal, while the owner of the vehicle, respondent No. 1 and the insurance company, respondent Nos. 2 & 3, filed counters denying the manner in which the accident took place, including the age, avocation and income of the deceased. It is also stated that the quantum of

compensation claimed is excessive, baseless and prayed to dismiss the petition.

5. Considering claim, counters and the oral and documentary evidence available on record, the tribunal held that the accident occurred due to the negligent driving of the Car by its driver and accordingly awarded an amount of Rs.6,58,000/- with interest at 7.5% per annum payable by respondent Nos. 1 to 3 jointly and severally. Dissatisfied with the quantum of compensation, the claimants filed the present appeal.

6. Heard both sides and perused the record.

7. The contention of the learned counsel appearing for the appellants is that the claimants have established that the deceased was earning Rs.4,500/- per month out of his employment with P.W.3 apart from Rs.150/- per day by hiring his auto to P.W.4, which has been substantiated with the evidence of P.Ws.3 & 4, but the tribunal has erroneously took the income of the deceased at Rs.4,000/- per month. It is further contended that the claimant Nos.2 and 3, being the minor children of the deceased, ought to have been granted

parental consortium of Rs.40,000/- each, in view of the judgment of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***[1]. Further, as per the decision of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[2], the claimants are entitled to addition of 40% towards future prospects to the established income of the deceased considering the age of the deceased as 30 at the time of the accident. However, the learned counsel has fairly conceded that as per the decision of the Apex Court reported in ***Sarla Verma v. Delhi Transport Corporation***[3], the appropriate multiplier, considering the age of the deceased as 30 years, is '17', but not '18', as was applied by the tribunal.

9. On the other hand, the learned Standing Counsel for the respondent No.2, Insurance company, has contended that in the absence of producing any documentary evidence to prove the income of the deceased, the Tribunal has rightly assessed the income of the deceased Rs.4,000/- per month

[1] (2018) 18 SCC 130
[2] 2017 ACJ 2700

[3] 2009 ACJ 1298 (SC)

and rightly awarded the just and reasonable compensation which needs no interference by this Court.

10. 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 either of the respondents.

11. As regards the quantum of compensation, the claimants claimed that the deceased was earning Rs.5,000/- per month out of employment under P.W.3 and also earning Rs.150/- per day by letting out the auto on hire basis to P.W.4. However, as rightly observed by the tribunal, except the oral testimony of P.Ws.3 & 4, no documentary evidence was produced to establish the income of the deceased. Such being the case and considering Exs.A.9, A.10 & A.13, this Court is inclined to fix the monthly income of the deceased at Rs.4,500/-. Considering the fact that the age of the deceased at the time of accident was below 30 years, the claimants are entitled to addition of 40% towards future prospects to the established income, as per the decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra). Therefore, the

future monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1800/-). From this, 1/4th is to be deducted towards personal expenses of the deceased following the decision in ***Sarla Verma*** (supra) since there are five dependents (claimant Nos. 1 to 3 and respondent Nos. 4 & 5). After deducting 1/4th therefrom towards his personal and living expenses, the contribution of income by the deceased to the family comes to Rs.4,725/- per month. Since the age of the deceased was 30 years as held by the Tribunal, the appropriate multiplier is '17' as per the guidelines laid down by the Apex Court in ***Sarla Verma*** (supra). Adopting multiplier '17', the total loss of dependency comes to Rs.4,725/- x 12 x 17 = Rs.9,63,900/-. That apart, the claimants are entitled to Rs.77,000/- under the conventional heads as per the decision of the Apex Court in **Pranay Sethi** (supra). Further, since the claimant Nos. 2 and 3 are minor children of the deceased, this Court is inclined to award a sum of Rs.40,000/- each to claimant Nos. 2 and 3 under the head of parental consortium as per the decision of the Apex Court in ***Nanu Ram @ Chuhru Ram*** (supra). Thus, in all, the claimants are entitled to Rs.11,20,900/-.

12. At this stage, the learned Counsel for the Insurance company submits that the claimants claimed only a sum of Rs.10,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

13. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[4] and ***Nagappa Vs. Gurudayal Singh***[5] the claimants are entitled to get just compensation even if it is more than the amount what was claimed by the claimants.

14. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is enhanced from Rs.6,58,000/- to Rs.11,20,900/-. The enhanced amount shall carry interest at 6% p.a. from the date of filing of the O.P. till the date of realization. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. On such deposit,

[4] (2011) 10 SCC 756
[5] 2003 ACJ 12 (SC)

the major claimants are entitled to withdraw their respective share amounts without furnishing any security. However, the claimants are directed to deposit the deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

18.01.2023
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.1063 of 2014

DATE: 18-01-2023