THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A.No.2719 OF 2015

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, aggrieved by the order and decree, dated 29.07.2015, passed in M.V.O.P.No.842 of 2012 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad (for short "the Tribunal").

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 petitioners filed a petition under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation of Rs.9,00,000/- together with costs and interest @ 18% p.a from the date of petition till realization, for the death of one Smt. Mahamooda Begum (hereinafter referred to as "the deceased"), who died in a motor vehicle accident. It is stated that on 08.01.2012 the deceased and her relatives after attending the engagement ceremony in Jagithyala, were returning to Hyderabad in a Tata Sumo bearing No.AP-28TV- 6018, on the way at about 16.30 hours when they reached near Saibaba Temple, Pudur Village of Kodimial Mandal, Karimnagar District, the driver of

the said Tata Sumo drove the vehicle in a rash and negligent manner and dashed a roadside tree. Consequently, the deceased and her relatives and the driver have sustained serious injuries. The deceased had sustained injuries on the vital parts of the body and died on the spot. After the occurrence of the accident, the deceased was shifted to Government Area Hospital, Karimnagar, for conducting autopsy over the dead body. Later the Police Kodimial has registered a case in Crime No.4 of 2012 under Sections 337 and 304-A of IPC against the driver of the Tata Sumo bearing No.AP28-TV-6018. The respondent No.1 is the owner and respondent No.2 is the insurer of the vehicle. According to the petitioners, the deceased was 38 years and she was hale and healthy and earning a sum of Rs.7,500/- per month. Therefore, they laid the claim against the respondents seeking compensation of Rs.9.00 lakhs.

4. The respondent No.2 filed a counter before the Tribunal denying the allegations made in the claim petition.

5. On behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A1 and A2. On behalf of respondent No.2 no oral evidence was adduced, but Ex.B1 was marked.

6. After considering the oral and documentary evidence available on record, the Tribunal allowed the O.P. in part awarding

a sum of Rs.5,10,000/- towards compensation with interest at 7.5% per annum, to be paid by the respondents jointly and severally. According to the petitioners, the Tribunal erroneously granted a very meager amount and for enhancement of the same, the petitioners filed the present appeal.

7. Heard and perused the record.

8. Learned counsel appearing for the petitioners argued that the Tribunal erred in fixing the salary of the deceased to Rs.3,000/- p.m and ought to have considered her income as Rs.7,500/- p.m despite she being a housewife, was engaged in the business of tailoring. He further contended that the Tribunal did not consider the aspect of future prospects and accordingly, prayed to allow the appeal by awarding enhanced compensation.

9. Per contra, learned counsel appearing for the respondent/insurance company contended that there is absolutely no evidence with regard to the income of the deceased, let alone the assertion of earning of Rs.7,500/- p.m. In such case, the Tribunal was justified in fixing the salary of the deceased at Rs.3,000/- p.m and prayed to dismiss the appeal.

10. The finding of the Tribunal with regard to the manner in which the accident took place, has become final since the same was

not challenged by the respondent. Insofar as the quantum of compensation is concerned, it is mentioned in the inquest report that the age of the deceased was 38 years and the multiplier applicable for the age group of 36 to 45 is 15 and the income of the deceased is taken as Rs.36,000/- per annum. We shall analyze whether the Tribunal was right in doing so.

11. Learned counsel for the petitioners brought to the notice of this Court the judgment rendered by the Hon'ble Supreme Court in ***Sanobanu Nazirbhai Mirza Vs. Ahmedabad Municipal Transport Service***[1] wherein it was held as under:

> *"Having regard to nature of job that deceased was performing as skilled polisher, it would be just and proper to take his monthly income as Rs.5,000/- and adding 50% towards future prospects and deducting 1/5th towards personal expenses, monthly income of deceased would come to Rs.6,000/-."*

12. Learned counsel for the petitioners relied upon the decisions of the Hon'ble Supreme Court in ***Arun Kumar Agarwal Vs. National Insurance Co. Ltd.***[2]***; Kirti vs. Oriental Insurance Company Ltd.***[3] *and* ***Rajendra Singh vs. National Insurance Company Ltd.***[4] wherein the question involved was related to the fixation of income of housewife in the cases of motor accidents for

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[1] 2014 (1) ALD 116 (SC)
[2] 2010 (9) SCC 218
[3] (2021) 2 SCC 166.
[4] (2020) 7 SCC 256.

the purpose of compensation and the Hon'ble Court found it apt to fix the same at Rs.5,000/-p.m. The Tribunal erred in fixing the income of the deceased @ Rs.3,000/- p.m. However, the arguments of the petitioners to consider the income of the deceased @ Rs.7,500/- p.m. in the absence of any evidence cannot be considered. As such, this Court is inclined to interfere with regard to just fixation of earnings of the deceased.

13. In view of the above discussions, this Court is inclined to fix the monthly income of the deceased @ Rs.6,000/- per month and future prospects of 40% as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[5] is to be considered. Therefore, the monthly income of the deceased comes to Rs.8,400/- (6,000 + 40%). From this, 1/4th is to be deducted towards personal expenses of the deceased following ***Sarla Verma Vs. Delhi Transport Corporation***[6] as the claimants are four in number (Rs.8400 – Rs.2,100 i.e. ¼) = Rs.6,300/- per month. Thus, the annual income of the deceased comes to Rs.6,300 x 12 = Rs.75,600/-. As the age of the deceased was 36 years, the appropriate multiplier to be taken is 15, hence, Rs.75,600/- x 15 = Rs.11,34,000/- is the loss of dependency.

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[5] 2017 ACJ 2700
[6] 2009 ACJ 1208(SC)

14. The petitioners are further entitled to the statutory benefits and conventional heads as per ***Pranay Sethi*** (supra), which are loss of consortium of Rs.40,000/- to the 1st petitioner; Loss of estate Rs.15,000/- and Funeral expenses Rs.15,000/-. Thus, this comes to a total of Rs.70,000/- to which 10% interest is to be added as per ***Pranay Sethi*** (supra), which comes to Rs.77,000/-The petitioners 2 to 4 are entitled to Rs.40,000/- each towards loss of parental consortium as per ***Magma General Insurance Co.Ltd Vs.Nanu Ram Alias Chuhru Ram***[7] which totals to Rs.1,20,000/-. In all, the petitioners are entitled to a total compensation of Rs.13,31,000/- as against the awarded amount.

15. In ***Laxman @ Laxman Mourya vs. Divisional Manager, Oriental Insurance Company Limited and another***[8], the Apex Court while referring to Nagappa vs. Gurudayal Singh held as under:

> *"It is true that in the petition filed by him under Section 166 or the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."*

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[7] 2018 Law Suit (SC) 904
[8] (2011)10SCC 756

16. In view of the Judgments of the Apex Court referred to above, the appellants/claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the appellants/claimants is a paramount consideration the Court should always endeavour to extend the benefit to the appellants/claimants to a just and reasonable extent.

17. Accordingly the compensation amount awarded is enhanced from Rs.5,10,000/- (Rupees Five Lakh and ten thousand Only) to Rs.13,31,000/- (Rupees Thirteen Lakh and thirty one thousand only).

18. In all, the appellants/claimants are awarded compensation of Rs.13,31,000/- (Rupees Thirteen Lakh and thirty one thousand only). Accordingly, the appeal is allowed, enhancing the compensation from Rs.5,10,000/- (Rupees Five Lakh and ten thousand only) to Rs.13,31,000/- (Rupees Thirteen Lakh and thirty one thousand only) with interest of 7.5% from the date of petition till the date of realization. The said amount shall be apportioned in the ratio as ordered by the Tribunal. The respondents shall deposit the said compensation amount together with interest and costs after giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this

judgment. However, the appellants/claimants are directed to pay the deficit court fee on the enhanced amount within one month from the date of receipt of the copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

8th day of February, 2023
PNS