IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No: 1655 of 2016

Appeal filed under section 173 of M.V.Act., aggrieved by the order and decree dated. 25-02-2016 passed in MVOP.No.760 of 2011 on the file of the III Additional District Judge-cum-Chairman, Motor Accidents Tribunal, at Karimnagar.

Between:

Reliance General Insurance Company Limited, Rep. by its Branch Manager, H.10, 105, 106 Express Arcade, Netaji Subash Pl, Pitampura, New Delhi-110034.

...APPELLANT/2nd Respondent

AND

1. Appala Shakuntala, W/o. Late Ramulu Rajanna Appala @ Appala Ramulu Age:55 years, Occ: Household lady
2. Appala Shiva Kumar, S/o. Late Ramulu Rajanna Appala @ Appala Ramulu, Age: 23 years, Occ: Student,
3. Appala Rajanna,, S/o. Mallanna, Occ: Nil (Died)
4. Appala Ashamma,, W/o. Appala Rajanna, Age:79 years, Occ: Household lady

Respondents No. 1 to 4 hail from Dharmapuri Village and Mandal of Karimnagar District, Telangana, But Presently R/o. H.No.3-7-858, Vavilalapalli Locality of Karimnagar City 505001.

...RESPONDENTS/Petitioners

5. Smt. Veena Dhawan, W/o. K.L.Dhawan, Age: Major, Occ: Owner of Offending Contrainer bearing No. HR-37B-5273, C/o. Anishka Logistics, BG 580, Sanjay Gandhi TPT Nagar, Delhi 110042.

...RESPONDENT/1st Respondent

I.A. NO: 1 OF 2016(MACMAMP. NO: 2257 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of operation of the decree and Judgment in MVOP No. 760 of 2011 on the file of the Court of the III Additional District Judge-Cum-Chairman, Motor Vehicle Accidents Tribunal, at Karimnagar, dated 25th February, 2016, pending disposal of the main CMA.

Counsel for the Appellant: Mr. K. AJAY KUMAR

Counsel for the Respondents No.1,2 & 4: Mr. AVKS PRASAD

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A. No.1655 OF 2016

JUDGMENT: *(per Hon'ble Sri Justice N. Tukaramji)*

This appeal has been preferred by the respondent No.2/insurer disputing the liability and quantum of compensation awarded in the decree and award dated 25.02.2016 in M.V.O.P.No.760 of 2011 on the file of the Motor Accident Claims Tribunal-cum- III Additional District Judge, Karimnagar.

2. We have heard Mr. K. Ajay Kumar, learned counsel for the appellant/respondent No.2/insurer and Mr. AVKS Prasad, learned counsel for the respondent Nos.1, 2 and 4/claim petitioners.

3. The respondents 1, 2 and 4/claim petitioners (hereinafter, 'the petitioners') filed claim petition seeking compensation of Rs.40 lakhs on account of death of Mr. Ramulu Rajanna Appala @ Ramulu/deceased in a motor accident dated 04.12.2010. In the claim petition it has been averred that, on 04.12.2010 while

the deceased was travelling in an R.T.C. bus bearing registration No.AP28Z4509, when reached near Ganesh Dhaba, Yedshi post on N.H.211 and while the deceased crossing the road to attend natural calls, a container lorry bearing registration No.HR37B 5273 (hereinafter 'the container lorry')driven by its driver in rash and negligent manner came in wrong side and dashed him and caused severe injuries and while undergoing treatment, he succumbed. The wife, son and parents of the deceased pleaded that, the deceased was aged about 54 years and as Mistry in MINT, Government of India with earnings of Rs.5,33,858/- per annum and contributed all his earnings to their welfare and the untimely death had deprived their dependency. Therefore prayed for compensation of Rs.40 lakhs. The tribunal after due enquiry awarded Rs.36,60,000/- with interest at 7.5% per annum from the date of the petition till realization.

4. Learned counsel for the appellant/respondent No.2/insurer (hereinafter, 'the insurer') would contend that the driver of the container lorry had no valid and effective licence at

relevant time and it is clear violation of policy condition, hence the insurer should have been exonerated. Further contended that though the Chief Manager/PW-2 had categorically deposed that the gross salary of the deceased was Rs.21,322/- in the month of December, 2010, However, the tribunal erroneously taken the income at Rs.4,82,000/-, after deductions. That apart, excessive amounts were awarded under the conventional heads. Hence prayed for intervention.

5. Learned counsel for the petitioners would submit that the respondents did not place any evidence to prove the contention as to the driving licence of the driver of the container lorry. Further the petitioners had placed the tax receipt of income tax department/Ex.A-9 and PW-3 had placed the pay slips of the deceased/Exs:X-1 and X-2 and also admitted the genuinity of the Form 16. Thus assessment of income by the tribunal was appropriate. However the future prospects were not taken into account. Thus prayed for awarding just compensation.

6. We have perused the materials on record and the pleadings of learned counsel are given due consideration.

7. The date of accident, involvement of the container lorry, the death, age and occupation of the deceased are not in dispute.

8. The contention of the insurer is that the driver of the container lorry was not holding valid driving licence and it is policy violation. To substantiate the insurer examined Head Clerk of Road Transport Authority/RW-2 and placed the driving licence/Ex.B-3.

9. The entries in the driving licence/Ex.B-3 are showing the licence to drive the category of the vehicle involved in the accident. However it appears the father's name is at variance to that of the name mentioned in the Ex.X-3 brought in by the RW-2. In cross examination the RW-2 admitted that except for the father's name other particulars are tallying. Pertinently, the other particulars includes the photograph of the driver. As the photographs in the Ex.B-2 & Ex.X-3 are matching, we found the

conclusion of the tribunal as to the validating the driving licence of the driver is found proper. In effect, we affirm the tirbunal's view on this aspect.

10. In regard to age of the deceased, it is pleaded that the deceased was aged about 54 years by the date of the accident. Further the Chief Manager of the MINT/PW-2 deposed that as per the record the deceased's date of birth was 24.08.1956. This evidence is clinching that the relevant age of the deceased was 54 years.

11. The Chief Manager of MINT/PW-2 deposed that the deceased was on the permanent rolls of their organization and Form 16/Ex.A-9 was issued by their office which was submitted to the income tax department. He clarified that the deceased was drawing gross salary of Rs.21,322/- and he was entitled for other emoluments though the same was not reflected in monthly salary slips. The income tax return of the relevant year has also been placed on record. The income tax return being statutory document, the entries therein can be relied to ascertain the

income of the deceased. Therefore, we are of the considered opinion that by relying on the income tax return/Ex.A-9, the annual income after the tax deductions can be taken at Rs.4,81,684/-.

12. As per the directives of the Constitutional Bench of the Hon'ble Supreme Court in *National Insurance Company Ltd. vs. Pranay Sethi and others*[1] for the age and regular nature of occupation of the deceased, 15% of income shall be added towards future prospects. Thus the annual income of the deceased would be at Rs.5,53,936/-. Counting the dependency of the petitioners, if 1/3rd of income is deducted towards personal living expenses, the contribution of the deceased to the family would be of Rs.3,69,290/-. This multiplicand if multiplied with the relevant multiplier applicable to the age of the deceased as prescribed in *Sarla Verma and others vs. Delhi Transport Corporation and another*[2] i.e. 11, the sum would come to

[1] (2017) 16 SCC 860
[2] 2009 ACJ 1298

Rs.40,62,190/-. The petitioners are entitled to this amount for loss of dependency.

13. In addition, as per the authorities of *National Insurance Company Ltd. vs. Pranay Sethi and others*[3], *Magma General Insurance Company Limited v. Nanu Ram @ Chubru Ram and others*[4] and *United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur and others*[5] the petitioners are entitled for spousal, parental and filial consortium respectively at Rs.48,400/- each and also Rs.36,300/- towards loss of estate and funeral expenses. Thus, in all the petitioners are entitled for compensation of Rs.42,43,690/- (Rupees forty two lakhs forty three thousand six hundred and ninety only). The rate of interest and the ratio of apportionment among the petitioners shall remain as per the impugned order. The respondents are directed to deposit the compensation amount within four weeks from the date of receipt of a copy of this order.

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[3] (2017) 16 SCC 860
[4] (2018) 18 SCC 130
[5] 2021(11) SCC 780

14. Accordingly, the Award dated 25.02.2016 in M.V.O.P.No. 760 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Karimnagar stands modified.

15. In the result, the appeal is dismissed without costs.

As a sequel, pending miscellaneous petitions if any, stands closed.

Sd/- MOHD. ISMAIL
ASSISTANT REGISTRAR

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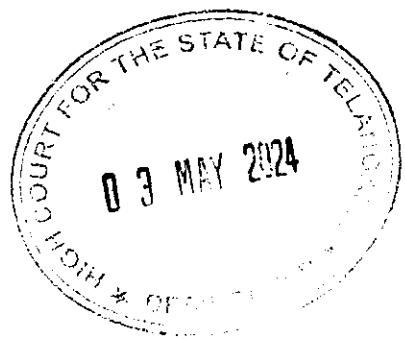
To

1. The III Additional District Judge-cum-Chairman, Motor Accidents Tribunal, at Karimnagar. (with records)
2. One CC to Mr. K. AJAY KUMAR, Advocate [OPUC]
3. One CC to Mr. AVKS PRASAD, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

DATED: 08/01/2024



JUDGMENT+DECREE
MACMA.No.1655 of 2016

THE APPEAL
IS DISMISSED

(6)
8/4/24

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Appeal filed under section 173 of M.V.Act., aggrieved by the order and decree dated. 25-02-2016 passed in MVOP.No.760 of 2011 on the file of the III Additional District Judge-cum-Chairman, Motor Accidents Tribunal, at Karimnagar.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the

case and upon hearing the arguments of Mr. K. AJAY KUMAR, Advocate for the appellant and Mr. AVKS PRASAD, Advocate for the Respondent Nos. 1,2 & 4.

This Court doth Order and Decree as follows:

1. That the Appeal be and hereby is dismissed without costs;
2. That the Award dated 05-02-2016 in M.V.O.P.No.760 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Karimnagar be and hereby is modified;
3. That there shall be no order as to costs in this appeal.

Sd/- MOHD. ISMAIL
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The III Additional District Judge-cum-Chairman, Motor Accidents Tribunal, at Karimnagar.
2. Two CD Copies

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HIGH COURT

DATED: 08/01/2024

DECREE
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