

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

M.A.C.M.A. Nos.918 & 935 OF 2010

M.A.C.M.A. No.918 of 2010

Between:

K.Mahender Yadav. ...Appellant

AND

M.A.Habeeb @ Shehen Shah and (7) others ...Respondents

M.A.C.M.A. No.935 of 2010

Between:

K.Mahender Yadav. ...Appellant

AND

Smt.Ghousiya Begum and (6) others. ...Respondents

DATE OF JUDGMENT PRONOUNCED : 28.02.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ M.A.C.M.A. Nos.918 & 935 OF 2010

% Dated 28.02.2024

M.A.C.M.A. No.918 of 2010

Between:

K.Mahender Yadav.

...Appellant

AND

\$ M.A.Habeeb @ Shehen Shah and (7) others

...Respondents

M.A.C.M.A. No.935 of 2010

Between:

K.Mahender Yadav.

...Appellant

AND

\$ Smt.Ghousiya Begum and (6) others

...Respondents

! Counsel for the Petitioner: Ms.Mogili Anaveni

^ Counsel for the Respondents: P.Durga Prasad
A.V.K.S. Prasad

< GIST :

>HEAD NOTE:

? Cases referred

1. (2009) 6 SCC 121
2. (2017) 16 SCC 680
3. (2018) 18 SCC 130
4. (2020) 9 SCC 644

THE HONOURABLE SRI JUSTICE K.SURENDER**M.A.C.M.A Nos.918 & 935 of 2010****COMMON JUDGMENT:**

M.A.C.M.A No.918 of 2010 is filed by the owner of the offending vehicle against the Order dated 28.06.2008 in M.O.P No.988 of 2005 passed by the learned Chairman, Motor Accident Claims Tribunal (District Court), Ranga Reddy District at L.B. Nagar.

2. M.A.C.M.A No.935 of 2010 is filed by the owner of the offending vehicle against the Order dated 09.01.2008, in O.P No.990 of 2005 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-IV Additional District and Sessions Judge's Court, Fast Track Court, Ranga Reddy District.

3. Since the appellant is same in both the cases and the appeals are filed against the same accident by the dependants of the two persons who died in the accident and the grounds raised in the above appeals are same, both these appeals are being disposed off by this common order.

4. The brief facts of the case are that while both the deceased were traveling on a scooter, the driver of the Tata Mobile van bearing No.A-207 AP09X 6629 came in opposite direction in a rash and negligent manner and dashed the scooter. Due to which, both the deceased fell down from the scooter and they were run over by the lorry bearing No.AP 16W 9339, which was behind the two wheeler going in the same direction on that of the scooter. The owner of the van, who is the appellant herein did not have insurance for his vehicle and for the said reason, the owner of the van was made as 1st respondent. The 2nd respondent in the trial Court is the owner of the lorry and the lorry was insured by the 3rd respondent company.

5. The Trial Court on assessing the evidence found that P.W.2 is eye witness to the incident, who was coming on a two wheeler behind the lorry. During the course of cross-examination, he stated that the mistake was with the driver of the van and due to the impact, they fell down and the lorry ran over the deceased and there was no negligence on the part of the driver of the lorry. On account of the said opinion given by P.W.2 during the course of his cross-examination before the tribunal, the tribunal placed

reliance on such evidence and exonerated the liability of the lorry owner and its insurer/3rd respondent.

6. Learned counsel appearing for the appellant/van driver would submit that as seen from the narration of facts and accident, though the van was at fault in hitting the scooter, the lorry driver had driven the vehicle in a negligent manner, resulting in running over the deceased. In fact, if the lorry driver was attentive, he would have averted the accident and the deceased would not have been killed. The very fact that the deceased were run over by the lorry would show that lorry was also negligent and they are liable to pay the compensation.

7. On the other hand, learned counsel appearing for the Insurance Company would submit that finding of the tribunal cannot be inferred with. If at all van did not hit the scooter, the question of lorry running over the deceased would not arise. In fact, P.W.2 was present when the accident took place and he clearly stated that the lorry was not at fault.

8. Reconstructing the accident, the deceased were on the scooter and the lorry was behind the scooter. The van had come in the opposite direction and hit the scooter. Both the van and

lorry drivers would be at height more than the scooter. It cannot be said that the lorry driver had not seen the van coming in the opposite direction. If the lorry driver was attentive, he would have in fact averted the lorry running over the deceased. It is not clear from the evidence about the speed of the vehicles, distance between the vehicles, width of the road and time taken by lorry running over the deceased after the van hit the scooter. In the said circumstances, the liability cannot be solely upon the van driver, since the manner in which the accident had taken place, negligence of the driver of the lorry cannot be ruled out. P.W.2 was behind the lorry and he cannot see what happened in front of the lorry. His opinion cannot form basis to award compensation finding that the lorry driver is not at fault.

9. In the said circumstances, this Court deems it appropriate that compensation granted to the claimants would be apportioned at 50% each. Both the owner of the van and also the insurer of the lorry are liable to pay the compensation.

M.A.C.M.A No.918 of 2010:

10. The petitioners in their claim petition stated that the deceased, M.A. Hafeez was aged 21 years and was working as

cleaner of lorry and used to earn Rs.3,500/- per month at the time of accident. Therefore, this Court finds that it is just and reasonable to consider the age of the deceased as 21 years and income of the deceased as Rs.3,500/- and thus the annual income of the deceased would be Rs.42,000/- (Rs.3,500/- X 12 = Rs.42,000/-).

11. As per the guidelines of the Hon'ble Apex Court in dictum of **Sarla Verma Vs. Delhi Transport Corporation**,¹ if the deceased was unmarried, $\frac{1}{2}$ of his income has to be deducted i.e., Rs.21,000/- towards his personal expenses. Thus, the annual income of the deceased after deducting personal expenses would come to Rs.21,000/- per annum (Rs.42,000/- – Rs.21,000/- = Rs.21,000/-) and the Hon'ble Apex Court in the dictum of **National Insurance Company Limited Vs. Pranay Sethi**², held that the future prospects of the income of the self employed shall also be included in the determination of compensation. Thus, considering the age of the deceased i.e., 21 years, 40% of the income i.e., Rs.8,400/- has to be added towards future prospects and thus the amount would become Rs.29,400/- (Rs.21,000/- + Rs.8,400/- = Rs.29,400/-). This

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

sum if multiplied with the multiplier 18, as applicable to the age of the deceased i.e.21, it would come to Rs.5,29,200/- (Rs.29,400/-X 18 = Rs.5,29,200/-). Thus, the claimants are entitled to Rs.5,29,200/- under the head 'Loss of Dependency'.

12. Besides, claimants are also entitled for compensation under 'conventional heads' as prescribed in the dictum of **National Insurance Company Limited's case (2 Supra)**, i.e., Rs.15,000/- towards loss of Estate and Rs.15,000/- towards funeral charges.

13. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation of 'consortium' given in the authority of **Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & others**³, and in the authority between **United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur and others**⁴, fortified that the amounts for loss of consortium shall be awarded to the children who lose the care and protection of their parents as 'parental consortium' and to the parents as, 'filial consortium' for the loss of their grown-up children, to compensate their

³ (2018) 18 SCC 130

⁴ (2020) 9 SCC 644

agony, love and affection, care and companionship of deceased children. Accordingly, it is just and reasonable to award Rs.40,000/- each to petitioner Nos.1 and 2 towards filial consortium.

14. Therefore, claimants are entitled for the compensation amount in the following terms:

1.	Loss of dependency	Rs.5,29,200/-
2.	Conventional heads	Rs.30,000/-
3.	Filial Consortium	Rs.80,000/-
TOTAL		Rs.6,39,200/-

M.A.C.M.A No.935 of 2010:

15. The petitioners in their claim petition stated that the deceased, Mohammed Hameed Pasha was aged 25 years and was working as driver of lorry and used to earn Rs.3,500/- per month at the time of accident. Therefore, this Court finds that it is just and reasonable to consider the age of the deceased as 25 years and income of the deceased as Rs.3,500/- and thus the annual income of the deceased would be Rs.42,000/- (Rs.3,500/- X 12 = Rs.42,000/-).

16. As per the guidelines of the Hon'ble Apex Court in dictum of **Sarla Verma's case** (1 supra) if the deceased was married, 1/3rd of his income has to be deducted i.e., Rs.14,000/- towards his personal expenses. Thus, the annual income of the deceased after deducting personal expenses would come to Rs.28,000/- per annum (Rs.42,000/- - Rs.14,000/- = Rs.28,000/-) and the Hon'ble Apex Court in the dictum of **National Insurance Company Limited's case** (2 supra), held that the future prospects of the income of the self employed shall also be included in the determination of compensation. Thus, considering the age of the deceased i.e., 25 years, 40% of the income i.e., Rs.11,200/- has to be added towards future prospects and thus the amount would become Rs.39,200/- (Rs.28,000/- + Rs.11,200/- = Rs.39,200/-). This sum if multiplied with the multiplier 18, as applicable to the age of the deceased i.e.25, it would come to Rs.7,05,600/- (Rs.39,200/- X18 = Rs.7,05,600/-). Thus, the claimants are entitled to Rs.7,05,600/- under the head 'Loss of Dependency'.

17. Besides, claimants are also entitled for compensation under 'conventional heads' as prescribed in the dictum of **National Insurance Company Limited's case** (2 supra), i.e.,

Rs.15,000/- towards loss of Estate and Rs.15,000/- towards funeral charges and Rs.40,000/- towards spousal consortium.

18. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation of 'consortium' given in the authority of **Magma General Insurance Company Limited's case** (3 supra), and in the authority between **United India Insurance Company Limited** (4 supra), fortified that the amounts for loss of consortium shall be awarded to the children who lose the care and protection of their parents as 'parental consortium' and to the parents as, 'filial consortium' for the loss of their grown-up children, to compensate their agony, love and affection, care and companionship of deceased children. Accordingly, it is just and reasonable to award Rs.40,000/- each to petitioner Nos.2 and 3 towards filial consortium.

19. Therefore, claimants are entitled for the compensation amount in the following terms:

1.	Loss of dependency	Rs.7,05,600/-
2.	Conventional heads	Rs.30,000/-
3.	Filial Consortium	Rs.80,000/-

4.	Spousal Consortium	Rs.40,000/-
TOTAL		Rs.8,55,600/-

20. In the result, M.A.C.M.A.No.918 of 2010 is allowed and the amount of compensation granted by the trial Court is enhanced from Rs.3,77,000/- to Rs.6,39,200/- and M.A.C.M.A No.935 of 2010 is allowed and the amount of compensation granted by the trial Court is enhanced from Rs.5,08,000/- to Rs.8,55,600/- with interest at the rate of 7.5% per annum on the amount awarded from the date of filing of the petition i.e., 27.12.2005 to 08.07.2007 till the deposit. Claimants are not entitled for interest from 09.07.2007 to 08.01.2008. Appellant, who is 1st respondent in lower Court and Insurance Company of the lorry, which is 3rd respondent in lower Court are jointly and severally liable to pay compensation equally (50% each) and are directed to deposit the entire amount within a period of one month from the date of receipt of a copy of this Judgment. On such deposit, claimants are permitted to withdraw the entire amount along with interest accrued on it. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

K.SURENDER, J

DATE: 28.02.2024

Note: Mark L.R. copy

B/o.CHS/TMK

THE HONOURABLE SRI JUSTICE K.SURENDER

M.A.C.M.A Nos. 918 and 935 of 2010

DATE: 28.02.2024

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