

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO*+ M.A.C.M.A. No.1801 OF 2016**

% 07-02-2023

Smt. B. Laxmi and others

....Appellants/Petitioners

Vs.

\$ Smt. Raju Devi and another

.... Respondents

!Counsel for the petitioner : K. Jagathpal Reddy

Counsel for the Respondents : I. Maamu Vani

<Gist :

>Head Note:

? Cases referred:

1. 2014 ACJ 2875
2. 2017(16) SCC 680
3. 2018 Law Suit (SC) 904

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

* * * *

M.A.C.M.A. No. 1801 OF 2016

Between:

Smt. B. Laxmi and others

....Appellants/Petitioners

Vs.

Smt. Raju Devi and another

.... Respondents

ORDER PRONOUNCED ON: 07.02.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No. 1801 of 2016****JUDGMENT:**

This Civil Miscellaneous Appeal is filed by the petitioners against the order and decree dated 08.02.2016 passed in M.V.O.P.No.564 of 2012 on the file of the Motor Accidents Claims Tribunal-cum- XIII Additional Chief Judge, City Civil Courts, at Hyderabad.

2. The brief facts of the case are as follows:

On 09.01.2012, the deceased, late B. Ramesh was proceeding in vehicle Toyota Quallis bearing No. AP15AS2328 as a driver as per the directions of his employer. He then reached near Allapur outskirts of Toopran and the deceased halted the vehicle to attend nature calls and got down from the front door. At that time, one lorry bearing No. RJ192G0241 came from Potharajupally side which was driven by its driver at high speed and in a rash and negligent manner, then hit the Quallis vehicle from behind and the deceased died on spot. The Government hospital, Gajwel conducted postmortem. The deceased B. Ramesh died leaving behind his legal heirs who are the

petitioners herein. On the said incident, the police Toopran registered a case vide Cr.No.4 of 2012 and later after due investigation, the police filed a charge sheet against the driver of the above said lorry. Hence the appellants filed a claim petition before the Court below, claiming Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only).

3. Respondent No.1 remained ex-parte.

4. The Court below after hearing both sides, framed issues and the 1st appellant got herself examined as PW-1 and marked Exhibits A1 to A7. Ex.A1 is a Certified Copy of FIR in Cr. No. 4 of 2012; Ex.A2 is the Charge sheet; Ex.A3 is the Inquest; Ex.A4 is the PMA report; Ex.A5 is the MVI report; Ex.A6 is the Spot Panchnama and Ex.A7 is the Driving license of the deceased. The eye-witness was examined as PW-2.

5. The Court below after considering all issues, allowed the petition in part by granting Rs.12,52,000/- (Rupees Twelve Lakh Fifty Two Thousand Only) with costs in all with an interest @ 9 % per annum from the date of filing petition till the date of realization with proportionate costs and the respondents are jointly and severally liable to pay the awarded amount. On such

deposit, the 1st petitioner was entitled to Rs.8,00,000/- (Rupees Eight Lakhs Only) and was permitted to withdraw Rs.4,00,000/- (Rupees Four Lakhs Only) in costs and the remaining amount of her share shall be kept in FDR for 4 years. The 4th and 5th petitioners were entitled to Rs.1,00,000/- (Rupees One Lakh Only) each. The 4th petitioner was permitted to withdraw Rs.50,000/- (Rupees Fifty Thousand Only) and the remaining amount shall be kept in FDR for 1 year. The 5th petitioner was permitted to withdraw the entire share amount. The remaining amount along with the entire interest was entitled to the 2nd and 3rd petitioners and their share amount shall be kept in FDR till they attain the age of majority. The petitioner was further directed to open a bank account in their village in a nationalized bank in accordance to Rule 471 of the Motor Vehicle Rules. Against the above order, the present appeal is filed questioning the quantum.

6. Heard learned counsel for the appellants and the learned counsel for the respondent/insurance company. Perused the record.

7. The learned counsel for the appellants contended that the tribunal granted less compensation without appreciating oral

and documentary evidence which was filed in support of the petitioners' case and further failed to consider the income of the deceased as per the judgment reported in 2014 ACJ 2875 which was in support of his claim. The court below erred in considering the salary of the deceased at Rs.90,000/- (Rupees Ninety Thousand Only) per annum only, in absence of evidence. Under the above grounds, the petitioners are seeking the enhancement of compensation.

8. Against the contentions of the appellants, learned counsel for the respondent argued that no salary certificate was produced in the court below and also, if he is a driver of the vehicle Quallis, he ought to have claimed compensation under Workman Compensation Act and further stated that the court below was justified in awarding the amount in question and prayed to dismiss the appeal.

9. Having considered the rival contentions of both parties, this Court is of the considered view, the Court below has wrongly fixed the income of the deceased as Rs.90,000/-(Rupees Ninety Thousand Only) per annum including future prospects. In support of his contention, learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **Kala**

Devi vs. Bhagwan Das Chauhan¹ the monthly income of a driver was considered as Rs.9,000/- (Rupees Nine Thousand Only) which would mean that the annual income is Rs.1,08,000/-(Rupees One Lakh Eight Thousand Only). The relevant portion of the decision stated supra is as follows:

“9. ... Therefore, the courts below have failed to take judicial notice of the same and the fact that the post of a driver is a skilled job. Thus, considering the facts and circumstances of the case, we take the gross monthly income of the deceased at Rs. 9,000/- p.m i.e Rs.1,08,000/- p.a.”

As such, the income of the deceased can be fixed at Rs.1,08,000/-(Rupees One Lakh Eight Thousand Only) p.a.

10. As per ***Pranay Sethi***², the future prospects to be added is to be considered as 40%, as the deceased was below 40 years of age i.e Rs.1,08,000/- + 40% (Rs.43,200/-) which totals to Rs.1,51,200. The claimants are 5 in number as such, 1/4th of the above amount is to be deducted towards personal expenses which is Rs.1,51,200/- - 1/4th (Rs.37,800/-) = Rs.1,13,400/-. Considering the age of the deceased, the multiplier for calculation of loss of dependency as per ***Pranay Sethi*** (supra) is

¹ 2014 ACJ 2875.

² 2017 (16) SCC 680.

to be taken as 17. Hence, Rs.1,13,400 x 17 = 19,27,800/-. The Court below granted consortium to the 1st appellant an amount of Rs.50,000/- however, the same is reduced to Rs.40,000/- as per **Pranay Sethi** (supra). Loss of Estate was awarded at Rs.25,000/- is hereby reduced to 15,000/- and funeral expenses were awarded Rs.30,000/- is hereby reduced to Rs.15,000/- which totals to Rs.70,000/-. As three years have elapsed since the decision of **Pranay Sethi** (supra), an interest of 10% is to be added to the above amount which would amount to Rs.77,000/-. Further, as per the decision rendered in Magma General Insurance Co.Ltd Vs.Nanu Ram Alias Chuhru Ram³ the parental consortium and loss of loyal consortium and parental consortium for minor children, the appellants 2 to 5 are awarded Rs. 40,000/- each which totals to Rs. 1,60,000/-. For simpler understanding, a table is depicted as hereunder:

Sl.No.	Head	Compensation awarded
1.	Income	Rs.9,000/- per month
2	Future Prospects	Rs.9,000/- @ 40% of the original income
3.	Annual income	Rs.1,08,000/- (Rs.9,000x12=Rs.1,08,000/-)

³ 2018 Law Suit (SC) 904

4.	Deductions towards personal expenses	Rs.1,13,400/- (Rs.1,51,200/- x 1/4 th = Rs.1,13,400/-) as the dependants are four in number.
5.	Loss of dependency	Rs.19,27,800/- (Rs.1,13,400/- x 17)
6.	Multiplier	17
7.	Loss of Spousal consortium – 2017 (16) SCC 680.	Rs.44,000/- (Rs.44,000/- + 10% thereof)
8.	Loss of parental and minor children consortium – Magma General Insurance Co.Ltd Vs.Nanu Ram Alias Chuhru Ram – 2018 Law Suit (SC) 904	Rs.1,60,000/- (Rs.40,000/-) Each to the appellants No.2 to 5.
9.	Funeral expenses	Rs.16,500/- (Rs.15,000/- + 10% thereof)
10.	Loss of Estate	Rs.16,500/- (Rs.15,000/- + 10% thereof)
	Total	Rs.21,64,800/-

11. Accordingly the compensation amount deserves to be enhanced from Rs.12,52,000/- (Rupees Twelve Lakh Fifty Two Thousand Only) to Rs.21,64,800/- (Rupees Twenty One Lakh, Sixty Four Thousand and Eight Hundred Only). However, the Court below has awarded interest at the rate of 9% p.a. Now the difference amount of Rs.9,12,800/- shall carry interest at the rate of 7.5% p.a. from the date of petition till date of realization.

12. Accordingly the appeal is allowed in part, enhancing the compensation from Rs.12,52,000/- (Rupees Twelve Lakh and Fifty Two Thousand Only) to Rs.21,64,800/- (Rupees Twenty One Lakh, Sixty Four Thousand and Eight Hundred only). The amount of Rs.12,52,000/- shall carry interest @ 9% p.a. from the date of petition till realization as awarded by the Tribunal. But, the enhanced amount of Rs.9,12,800/- shall carry interest at the rate of 7.5% p.a. from the date of petition till realization. The respondents shall deposit the amount within a period of two months from the date of receipt of a copy of this order, after giving due credit to the amount, if any, already deposited. On such deposit of compensation amount by the respondents, the claimants are at liberty to withdraw the same in proportionate to the ratio fixed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

7th day of February, 2023

BDR