

IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD

* * *

M.A.C.M.A.No.435 OF 2021

AND

M.A.C.M.A. No.211 OF 2022

M.A.C.M.A.No.435 OF 2021

Between:

New India Assurance Company Ltd.

Appellant/respondent No.2

VERSUS

Seema Girotra and others

Respondents

M.A.C.M.A. No.211 OF 2022

Between:

Seema Girotra and another

Appellant/respondent No.2

VERSUS

Ravikanth Laishetty and others

Respondents

ORDER PRONOUNCED ON: 20.12.2023

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

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

N. TUKARAMJI, J

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

**+ M.A.C.M.A.No.435 OF 2021
AND
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...Respondents

! Counsel for Petitioner(s)

: Mr. Mohd.Ismail

^Counsel for the R-2

: Mr. A.Ramakrishna Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1 2009 ACJ 1298

2 (2017) 16 SCC 860

3 2021(11) SCC 780

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

**M.A.C.M.A.No.435 OF 2021
AND
M.A.C.M.A. No.211 OF 2022**

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

This judgment would dispose of M.A.C.M.A.Nos.435 of 2021 and 211 of 2022.

2. The M.A.C.M.A.No.435 of 2021 has been preferred by the insurer/respondent No.2 and the M.A.C.M.A.No. 211 of 2022 has been filed by the claim petitioners against the decree and order dated 06.11.2020 in M.V.O.P.No. 2345 of 2015 on the file of the Motor Accidents Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Courts, Hyderabad.

3. We have heard of Mr. Mohd. Ismail, learned counsel for the petitioners and Mr. A. Ramakrishna Reddy, learned Counsel for the insurer/respondent No.2 and perused the record.

4. The parties hereinafter are referred to as per their rank before the tribunal.

5. The relevant facts in brief are that, on 10.07.2015 at about 8.30 a.m. while Nisheeth Girotra/deceased was proceeding on motorcycle near Iqbal Minar Circle, Saifabad, a Tata Indica Car bearing registration No. AP-09-TC-5235 driven by its driver in rash and negligent manner dashed the motorcycle and caused severe injuries to him and while undergoing treatment in the hospital succumbed to injuries.

6. The wife and minor son of the deceased filed a petition claiming compensation of Rs.1,50,00,000/- on the ground of loss of dependency. The tribunal after due enquiry awarded Rs.1,11,96,840/- with interest at 7.5% per annum from the date of the petition till the date of deposit.

7. Learned counsel for the respondent No.2/insurer has contended that the tribunal had erred in omitting the deduction of the employer paid Rs.40 lakhs to the deceased family from the awarded compensation. Further the tribunal ought not to have considered the father of the deceased as dependent as he is into business. Further, the future prospects would accrue in the times

yet to come, which is not actual loss of income as such, granting interest over that amount would amount to unfair advantage, therefore the amount of future prospectus shall be subtracted while granting interest.

8. On the other hand, the claim petitioners dissatisfied by the quantum of award would contest that as per the salary certificate/Ex.A-7 the income was Rs.87,000/- per month; whereas the tribunal wrongly considered the net salary of Rs.76,457/- for assessment of compensation and unreasonably deducted Rs.1,50,000/- from the annual salary. Further the evidence of PW-3 and letter issued by Dell International Services India Pvt.Ltd./Ex.X-1 were ignored while determining the annual income. Thus prayed for reassessment of salary and for enhancement of compensation.

9. The submissions of the learned counsel are duly considered and the materials on record are perused.

10. At the outset, the age, occupation of the deceased and the liability of the respondents to pay compensation are not in dispute.

11. The first contention of the respondent No.2/insurer is that the employer had paid Rs.40 lakhs after the death of the deceased, as such, that amount should have been deducted from the compensation granted. Evidently the employer had paid the amount from the Employee Welfare Trust Fund. It is not the case that the employer is also liable to pay compensation for the death of its employee in the motor accident and the amount granted by the employer was an ex-gratia or compensation for the death of the deceased in the accident. Further the employment linked welfare measure cannot be equated with a benefit or part of compensation for the death in a motor accident. The insurer, except raising the contention, has not made out any other legally acceptable basis to establish the rationale for discounting that amount from the compensation amount awarded in the petition. That apart the benefit that has been accrued out of contribution by the employee either by subscription or service cannot be

treated as allowance in the parlance of compensation. In this view the claim of the respondent No.2/insurer for reduction of employer paid amounts cannot be accepted, thus declined.

12. In regard to income the petitioners placed on record the Form No.16 (TDS)/Ex.A-8 of the deceased. It is a settled position that wherever a statutory document in relation to income and tax is available, placing reliance on it in determining the income would be appropriate. The entries in Ex.A-8 are showing annual gross income at Rs.10,45,942/-. From this amount, if the amounts payable under income tax i.e. Rs.1,38,782.60 ps. as per the tax slabs of the relevant year and the professional tax of Rs.2400/- are deducted, the annual income of the deceased would be Rs.9,04,759.40 ps. The evidence of HR Adviser of the deceased/PW-3 is indicating that the employment of the deceased was with emoluments and not for fixed tenure. Therefore the employment of the deceased has to be considered as permanent/regular and as the age of the deceased was below 40 years, 50% of the income shall be included towards future

prospects. Correspondingly the annual income of the deceased would be Rs.13,57,139/-.

13. The respondent No.2/insurer has contested that the father of the deceased shall not be considered as dependent as he is into business as per the cause title of the petition itself. By the petition, the respondent No.3/father of the deceased is aged 74 years. Considering the physical ability to conduct business at that age and the necessity of care, we are inclined to consider his dependency on the deceased. Thus there would be four dependents and as per the settled law in *Sarla Verma and others vs. Delhi Transport Corporation and another*¹ and *National Insurance Company Ltd. vs. Pranay Sethi and others*², 1/4th of the income has to be deducted towards personal expenses. Accordingly the annual income would be of Rs.10,17,855/-. This multiplicand, if multiplied with the relevant multiplier to the age of the deceased i.e. 15, as prescribed in the judgment of *Sarla Verma* (supra) the total comes to Rs.1,52,67,825/-. The amount has to be granted for loss of dependency.

¹ 2009 ACJ 1298

² (2017) 16 SCC 860

14. In addition, as per the directives of the Constitutional Bench of the Hon'ble Supreme Court in *Pranay Sethi (supra)* and *United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur and others*³ the petitioners are entitled for spousal, parental consortium at Rs.48,400/- each and also Rs.36,300/- towards loss of estate and funeral expenses and the respondent Nos.3 and 4 are entitled for filial consortium at Rs.48,400/- each. Thus, in all the petitioners 1, 2 and respondent Nos.3 and 4 are entitled for compensation of Rs.1,54,97,725/-.

15. Learned counsel for the respondent No.2/insurer has pleaded that granting interest over the future prospects would amount to granting interest over the amounts that may be accrued in future. Further by placing reliance on authority in the *Oriental Insurance Company Limited v. Smt. Champabati Ray and others* – GAHC010239122017 – Case No.MACApp.378/2017 dated 01.10.2019, pleaded that the Hon'ble Gauhati High Court had considered this aspect and held that the interest need not be granted on future prospects.

³ 2021(11) SCC 780

16. We have carefully considered this submission. It is pertinent to note that for the claimant, the entitlement for compensation arises from the date of cause of action, that is, from the date of accident and the liability of the parties and the compensation would be settled accordingly. Nonetheless, as per the stipulation under section 171 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the interest is being granted from the date of petition.

17. Further to note, the assessment and grant of compensation for loss of dependency and all other heads except the funeral expenses are for the loss in the future course. Future prospectus is one factor of estimating probable earnings of the deceased in future. Calculating the loss of earnings, based on the income by the date of accident, in all likelihood would be certain. To say that, if the deceased/injured continued his employment, he/she would earn that amount as minimum. Likewise, professional expertise, demand, productivity, prevailing market rates, inflation, cost of living, government regulations and the bargaining capacity will determine the increase in the earnings/wages. These aspects are also sure to happen. Therefore, whatever is the profession or

employment of the deceased/injured, if the avocation is continued, assuredly there would be an increase in the wages and income. Having regard to this plausibility, the future prospects are included in the income while assessment of compensation.

18. Though the future prospectus is an event to come in the future, as the quantification in exactitude is not possible, applying the principle of standardization, taking into account the imponderables, uncertainties and probable averages of relevant factors, in pragmatic computation which is in proximity to reality, the Constitutional Bench of the Hon'ble Apex Court in *Pranay Sethi (supra)* by balancing between a windfall and the pittance, settled the future prospects keeping in view the principle of certainty, stability and consistency, thereby and approved formalisation of this component in the cases of regular/permanent employment and self employed or on fixed salary to add up with the current actual income in working out the specific and certain multiplicand, which would be income of the deceased/ injured for applying the multiplier on the basis of

age. Thus the future prospects are an indispensable constituent in determination of the compensation.

19. Another notable aspect is that, awarding of compensation would be from the date of cause of action/petition, which includes future prospects of the income. If the compensation is realized by the date of petition and kept in deposit with a banker, that amount would certainly earn interest. Counting this facet, granting interest on the compensation amount inclusive of the future prospects from the date of petition, till realization cannot be held as granting additional interest as contested by the insurer and it is perfectly justified.

20. In any case, bisecting the future prospectus without clear indices or guideline as to when and how much has to be included in the income, pleading for discounting the interest over the portion of future prospect alone would be implausible. Further, Section 171 of the Act in unqualified terms prescribes that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making of the claim.

21. For these reasons we are unable to subscribe to the view taken in the authority cited by the respondent No.2/Insurer and in our considered opinion, the respondents shall be liable to pay interest over the entire compensation amount, including the future prospectus.

22. Be that as it may, if the insurer is really concerned as to the interest component, at least in the cases where the liability is not in dispute, it shall make an endeavor to settle the claim in terms of Section 149 of the Act.

23. For better appreciation, Section 149 in The Motor Vehicles Act, 1988 is extracted hereunder:

149. Settlement by insurance company and procedure therefor. –

(1) The insurance company shall, upon receiving information of the accident, either from claimant or through accident information report or otherwise, designate an officer to settle the claims relating to such accident.

(2) An officer designated by the insurance company for processing the settlement of a claim of compensation may make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days and after following such procedure as may be prescribed by the Central Government.

(3) If, the claimant to whom the offer is made under sub-section (2),

-(a) accepts such offer,

-(i)the Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent; and

(ii)the payment shall be made by the insurance company within a maximum period of thirty days from the date of receipt of such record of settlement;

(b) rejects such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits.

24. Even if the effort of the insurer to settle falls short and the matter proceeds for adjudication, the insurer shall consider to deposit the amount arrived at as per the settled legal positions or the offered amount for settlement before the tribunal. Such a positive action would indisputably save the payment of interest on the compensation, at least to the extent of the amount deposited, even if the quantum of compensation is determined otherwise by the tribunal and the appellate forums.

25. For the aforesaid, the petitioners 1, 2 and respondent Nos.3 and 4 are eligible for compensation of Rs.1,54,97,725/- (Rupees One Crore fifty four lakhs ninety seven thousand seven hundred and twenty five only) with interest at 7.5% per annum from the date of the petition till the date of deposit. The apportionment of compensation among the claimants/petitioners and respondents shall remain the same as per the impugned award. The respondent No.2/insurer is directed to deposit the awarded amount within six weeks from the date of receipt of a copy of this order.

26. In the above terms, the Award dated 06.11.2020 in [M.V.O.P.No.](#) 2345 of 2015 on the file of the Motor Accidents Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court, Hyderabad stands revised.

27. In the result, the M.A.C.M.A.No.435 of 2021 filed by the respondent No.2/insurer is dismissed without costs and the M.A.C.M.A.No.211 of 2022 filed by the petitioners is allowed.

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

P. SAM KOSHY, J

N.TUKARAMJI, J

Date:20.12.2023

Note:

L.R.copy to be marked.

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