THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.1722 of 2016

JUDGMENT:

1. Heard learned counsel for both sides.

2. The respondent No.2 (The Managing Director, APSRTC) in M.V.O.P.No.244 of 2013 on the file of I Additional District Judge-cum-Motor Accidents Claims Tribunal, Ongole, *['for short 'MACT'],* filed the present appeal invoking Section 173 of the Motor Vehicles Act 1988, questioning the sustainability of the award and decree dated 26.06.2015 passed therein.

3. Respondents 1 to 4 herein are the claimants and respondent No.5 herein is the driver of APSRTC Bus bearing No. AP 10 Z 7658 *[herein after referred as 'offending vehicle'].* He remained *ex parte* before the MACT.

4. The parties will be hereinafter referred, as and how they are arrayed before the learned MACT.

<u>The case of the claimants, in brief, is that</u> –

5. [i] The 1st claimant is the husband, the 2nd and 3rd claimants are her daughters and 4th claimant is the mother of one Jyothi Marthamma [*[herein after referred to as 'the deceased'].* On 24.06.2013, the deceased went to attend her employment as labourer in bricks Kiln of Thokala Venkateswarlu and while she

was crossing the road near the Kiln between Sankarapuram and Thimmayapalem villages road, within the limits of Addanki Police Station, the offending vehicle/APSRTC bus coming from Darsi side came in a rash and negligent manner and dashed the deceased, whereby she sustained injuries all over the body and she was shifted to Government Hospital, Addanki from there to Venkata Ramana Hospital, Ongole, but while undergoing treatment, she breathed her last on 25.06.2013.

[ii] A case in Crime No.126 of 2013 was registered in Addanki Police Station for the offences under Section 338 and 204-A IPC against the driver/1st respondent.

[iii] The deceased was aged about 35 years working as coolie, earning Rs.200/- per day and also attending domestic works like cooking, washing, cloths, housekeeping etc., and in all she was earning Rs.10,000/-. Due to the death of the deceased, the claimants lost financial and every support of the deceased. Hence, entitled for compensation of Rs.6,00,000/-.

<u>The case of the 2nd respondent, in brief:-</u>

6. The claimants shall prove their relationship with the deceased, negligence of the driver of the RTC bus, age, occupation and income of the deceased, dependency of the claimants etc., and in any event, the quantum of compensation claimed is excessive.

7. On the strength of pleadings, learned MACT settled the following issues for trial:

1) Whether the deceased died on account of the injuries received in the accident caused due to rash and negligent driving of the bus bearing No.AP 10 Z 7658 by the first respondent or was there any contributory negligence on the part of the deceased as alleged by the second respondent?
2) Whether the petitioners are entitled for compensation as prayed for and from which of the respondents?
3) To what relief the petitioners are entitled?

<u>Evidence before the learned MACT</u>:-

<u>Oral Evidence:</u>

8. [i] Claimant No.1 was examined as PW1. He has stated about the relationship of the claimants with the deceased, her age, occupation and income and death of the deceased due to accident as well as employment of 1st respondent by the 2nd respondent, registration of the case by Police and the cause of death of the deceased is due to accident.

[ii] Further, one Jyothi Narayanamma said to be an eye witness to the accident, was examined as PW.2 on behalf of the claimants and she has stated about the accident and negligence of the driver of the bus.

[iii] On behalf of the respondents, M.Obaiah, driver of the bus was examined as RW.1. He has stated that when the bus reached near Brick Kiln, he

has observed that one tipper was stopped on the left side of the road, he has blown horn and while crossing the tipper, one pedestrian i.e., the deceased, was crossing the road from back side of the tipper without noticing the bus. He has applied sudden break, but the deceased dashed the right side corner of the bus and fell on the road and sustained head injury; using the cell phone, the deceased has tried to cross the road negligently, which is the cause of the accident.

Documentary Evidence:

9. Documentary Evidence:-

For the Claimant		For the Respondents	
Exhibit No.	**Description**	**Exhibit No.**	**Description**
Ex.A1	Certified copy of First Information Report in Cr.No.126/2013 Addanki Police Station.	- Nil -	
Ex.A2	Certified copy of charge sheet in Crime No.126/2013 of Addanki Police Station.		
Ex.A3	Certified copy of inquest report in Crime No.126/2013 of Addanki Police Station.		
Ex.A4	True copy of the Postmortem Report		
Ex.A5	Family Member Certificate		

Findings of the learned MACT:

10. [i] By referring to the evidence of PW.2, an eye witness and the recitals in Ex.A1-FIR, Ex.A2-Charge Sheet etc., learned MACT opined that the accident occurred due to rash and negligent driving of the driver of APSRTC bus. Accordingly held that issue in favour of the claimants.

[ii] With regard to the entitlement of the claimants and quantification, learned MACT believed their relationship, taken the income of the deceased at Rs.3,000/- per month accepted Rs.2,500/- as contribution, applied multiplier '16', fasten the liability on the 2^{nd} respondent/appellant awarded a compenstaion of Rs.4,62,000/- with interest @6% p.a. and made apportionment Rs.2,37,000/- to husband and Rs.75,000/- each to other claimants.

Grounds urged in the Memorandum of Appeal and Arguments advanced in the appeal:-

11. [i] Negligence of the deceased in crossing road is ignored by the Tribunal, quantification of compensation done is not correct. The claim is not supported by sound evidence, for taking income of the deceased @Rs.3,000/- per month. Quantum of compensation award is excessive.

[ii] For claimants, it is argued that the rate of interest granted is low, the quantification of compensation done required enhancement, even in the absence of the appeal by the claimants.

12. Perused the Record.

13. Thoughtful consideration given to the arguments advanced by the both sides. Now the points that arise for determination in this appeal are that -

1) Whether the pleaded accident and negligence of driver of the offending vehicle as its cause and contribution of negligence of the deceased, are acceptable in the light of the evidence and facts and circumstances?
2) Whether the claimants are entitled for compensation? if so, for what quantum?
3) Whether the impugned award and decree dated 26.06.2015 are sustainable in law and on facts?
4) Whether any interference is necessary? If so, on what grounds and to which extent?
5) What is the result of the appeal?

Points No.1:

14. The evidence of Pw.2 is clear as to negligent driving of offending vehicle by the respondent No.1. The evidence of RW.1, the driver of RTC bus indicating that he has noticed a Tipper parked on the road side and he has blown horn also. It indicates that he is conscious of the fact that there is possibility of some others coming from behind of the Truck and the visibility of the persons and vehicles crossing the Truck. He has also stated that he applied breaks and the deceased hit on the right side of the bus. The steering will be on the right side of any vehicle. Driver from steering side can have better opportunity to notice, who and

what is coming from right side. It is not the case that, the deceased has come into contact on left side negligently crossing. Therefore, opportunity to prevent the mishap is more on the part of the 1st respondent/driver is not mere probability and it is something clear than certainty. The material like absence of any departmental proceedings against the driver, acquittal of the driver in criminal proceedings pursuant to the Ex.A2, would have been some source of strength for the stand of the appellant; such material is not placed on record. Therefore, this Court concurs with the finding of learned MACT as to the negligence of the driver of the offending vehicle.

15. In Motor Vehicle Accident claims cases, while disputing the negligence, if the following efforts are put in, they will throw some light:

1) There must be denial.
2) There must be some evidence at least by the parties.
3) There must be at least oath against oath and tested by cross-examination.
4) Examination of eye witnesses reflected in charge sheet filed by Police is preferable. However, the same cannot be the thumb role, if the presence of such witnesses examined is probable at the scene of offence, at relevant time.
5) The driver of the offending vehicle, if takes witness stand and denies the negligence, it will have its own importance, at least in cases of contributory negligence.

6) In cases of serious disputes as to planting of either witnesses or vehicles, summoning the investigating officers and eliciting the probabilities or improbabilities will have considerable impact.
7) The rough sketch of scene of offence and Motor Vehicles Inspector Report indicating the damage to the vehicles etc., will have its own effect to vindicate the stand of the parties.
8) However, no stick jacket and standard formula is possible and each matter has to be considered on its own merits and facts and circumstances including the relevant and reliable evidence placed before this Court.
9) Finally the Tribunal shall have holistic view of the matter.

16. This Court finds it relevant to note the observations of the Hon'ble Apex Court made in ***Bimla Devi v. Himachal RTC*[1]*,*** which reads as under:

> "*15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties..*"

17. In the present case, the solitary evidence of RW.1 without there being any further material, indicating the contribution of negligence of the deceased, this Court finds that the conclusions drawn by the learned MACT does not require any interference on this part.

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[1] *(2009) 13 SCC 530*

18. Accordingly, the point is answered against the appellant and in favour of the claimant.

Point No.2:-

Entitlement:-

19. The claimant No.1 is the husband, claimants 2 and 3 are the children and claimant No.4 is mother of the deceased. Ex.A5 is Family Member Certificate. The relationship is also not in serious dispute except vague and formal denial. Further the death of the deceased due to the accident is also clear from the record. Hence, the entitlement of the claimants for compensation is clear.

Quantum:-

20. Precedential Guidance in quantifying the compensation in case of claims arising out of Motor Vehicles Accidents causing death:-

The judgments which can be considered as locus classicus that guides the Motor Accident Claims Tribunals and the Courts concerned, in the process of quantifying the compensation mainly are as follows:

(1). **Sarla Verma (Smt.) and Ors. Vs. Delhi Transport Corporation and Anr.**[2]:-

The Honorable Apex Court, referring to relevant principles relating to assessment of compensation in cases of death, in the light of earlier judicial pronouncements, to have uniform approach and consistency in awarding

[2] 2009 (6) SCC 121

compensation, felt need for the awarding ‘just compensation’, which is not merely the Tribunal considers it just, but it shall be just, adequate, fair, and equitable compensation with reference to facts and circumstances of each case. Accordingly, issued certain guidelines.

Relevant observations are made at Para 18 and 19 of the judgment, while observing that there shall be addition of further prospects to the income and deduction towards personal and living expenses and selection of appropriate multiplier. Finally, the Honorable Apex Court referred to multiplier that can be adopted is what mentioned in column number 4 of Table provided in the judgment as contemplated in *Trilok Chandra*[3]'s case, clarified in ***New India Assurance Co. Ltd.*** **v.** ***Charlie***[4] .

Para Nos.18 and 19, and the table provided in **Sarla Verma’s case** [cited supra] are extracted for better appreciation:--

> “**18.** Basically only three facts need to be established by the claimants for assessing compensation in the case of death:
>
> (*a*) age of the deceased;
>
> (*b*) income of the deceased; and
>
> (*c*) the number of dependants.
>
> The issues to be determined by the Tribunal to arrive at the loss of dependency are:
>
> (*i*) additions/deductions to be made for arriving at the income;

[3] (1996) 4 SCC 362
[4] (2005) 10 SCC 720 : 2005 SCC (Cri) 1657

(*ii*) the deduction to be made towards the personal living expenses of the deceased; and

(*iii*) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardised, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs 5000 to Rs 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the

head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.
The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

……

40. The multipliers indicated in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] (for claims under Section 166 of the MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under Section 163-A of the MV Act (with appropriate deceleration after 50 years):

Age of the deceased	*Multiplier scale as envisaged in Susamma Thomas*[5]	*Multiplier scale as adopted by Trilok Chandra*[6]	*Multiplier scale in Trilok Chandra's case as clarified in Charlie*[7]	*Multiplier specified in Second Column in the Table in Second Schedule to the MV Act*	*Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)*
(*1*)	(*2*)	(*3*)	***(4)***	(*5*)	(*6*)
Upto 15y	-	-	***-***	15	20
15 to 20y	16	18	***18***	16	19
21 to 25y	15	17	***18***	17	18
26 to 30y	14	16	***17***	18	17
31 to 35y	13	15	***16***	17	16
36 to 40y	12	14	***15***	16	15
41 to 45y	11	13	***14***	15	14
46 to 50y	10	12	***13***	13	12
51 to 55y	9	11	***11***	11	10
56 to 60y	8	10	***09***	8	8
61 to 65y	6	08	***07***	5	6
Above 65	5	05	***05***	5	5

[5] [(1994) 2 SCC 176 : 1994 SCC (Cri) 335]
[6] [(1996) 4 SCC 362]
[7] [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]

(2). <u>National Insurance Company Ltd. v. Pranay Sethi and Others:-</u>[8]

In this case, the Honorable Apex Court, after referring to the observations in **Sarla Verma**'s case cited supra, issued certain guidelines, the relevant paragraphs are 59.3 to 59.8 they are:

> *"**59.3.** While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> ***59.4.** In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*
>
> ***59.5.** For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] which we have reproduced hereinbefore*
>
> ***59.6.** The selection of multiplier shall be as indicated in the Table in Sarla Verma's case read with para 42 of that judgment.*

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[8] 2017(16) SCC 680

59.7. *The age of the deceased should be the basis for applying the multiplier.*

59.8. *Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs.40,000 and Rs.15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

(3). **MAGMA General Insurance Company Ltd. v. Nanu Ram and Others**[9]

In this case the Hon'ble Apex Court considered the point that whether loss of consortium, include "spousal consortium", "parental consortium", and "filial consortium" in a case of death. It was a case of death of Bachelor, and claim was made by father and sister, etc., relevant observations are made in Para Nos. 21-23 as to who are entitled for consortium, observations are as follows:-

"**21.** A Constitution Bench of this Court in *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the

[9] (2018) 18 SCC 130

deceased spouse : [*Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. *Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]*

21.2. *Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

21.3. *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

23. *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this* *count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570] . However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*

Analysis of evidence and findings on the point of quantum:-

21. [i] Recitals in F.I.R. and inquest, indicating that the deceased was going for attending work at Kiln, this suggests that she was attending labour work. As per Charge sheet, age of the deceased is referred as 35 years. As per inquest, the age of the deceased is referred as 35. Mentioning of age and inquest cannot be considered as pre-planned one, therefore, the age of the deceased can be accepted as 35. The income taken at Rs.3,000/- by the learned MACT, is fit to be accepted taking into the socio economic circumstances and background from which the deceased hails and also the year of accident viz., 2013, which shall be inclusive of future prospects. If the income is taken at Rs.3,000/-, 1/4th of the same towards personal expenditure of the deceased, if deducted, the same comes to Rs.750/-, whereby the contribution comes to Rs.2,250/-.

[ii] The compensation under the other heads like loss of estate, funeral expenditure, loss of consortium to spouse, children and parents contemplated under the authorities cited above. Those aspects and heads are not properly

added by the learned MACT. Hence, revisit is necessary whereby the compensation awarded gets increased. There is no appeal by the claimants one aspect. However, on this point, this Court finds proper to rely on the judgment of the Division Bench of this Court in **National Insurance Company Limited Vs. E.Suseelamma and others**[10]**,** while answering point No.3 framed therein vide, para 50 of the judgment, which reads as follows:

> *"50. In our considered view, the claimant/respondents are entitled for just compensation and if on the face of the award or even in the light of the evidence on record, and keeping in view the settled legal position regarding the claimants being entitled to just compensation and it also being the statutory duty of the Court/Tribunal to award just compensation, this Court in the exercise of the appellate powers can enhance the amount of compensation even in the absence of appeal or cross-objection by the claimants."*

22. In the light of the evidence on record and in view of the legal preposition of law and reasoning stated above, comparative table as to the entitlement of the claimants for just and reasonable compensation, under various heads considered and granted by the Tribunal is as follows:

	Head	***Compensation awarded by the MACT***	***Fixed by this Court***
(i)	Loss of Dependency	Rs.4,32,000/-	Rs.4,32,000/-
(ii)	Loss of Consortium	Rs.25,000/- [for the 1st claimant only]	Rs.1,60,000/- [@ 40,000/-each entitled for the 4 claimants]
(iii)	Loss of Care, Guidance, love and affection towards children	-	-Nil- [

[10] 2023 SCC Online AP 172

(iv)	Funeral and obsequies expenses	Rs.5,000/-	Rs.15,000/-
(vi)	Loss of estate	Nil	15,000/-
(vii)	Attendant Charges and Transportation Expenses	-	-
	Total compensation awarded	**Rs. 4,62,000 /-**	**Rs.6,22,000/-**

23. In the facts and circumstances of the case, the interest awarded by the learned MACT @6%p.a. is enhanced to 7.5% p.a..

24. In the light of the analysis made and the findings of this Court, Points No.2 is answered in favour of the claimants concluding that they are entitled for compensation of Rs.6,22,000/- with interest @7.5% p.a..

Point Nos.3 and 4:-

25. For the reasons stated and the conclusions drawn in Points No.1 and 2, the impugned award and decree dated 26.06.2015 are sustainable in law and on facts except in regard to enhancement of compensation from Rs.4,62,000/- to **Rs.6,22,000/-.** Points No.3 and 4 is answered accordingly

26. Point No.5: For the aforesaid reasons and conclusions drawn under Points No.1 to 4,

[i] In the result, the appeal is dismissed. However, in view of the observations of the Division Bench of this Court in **National Insurance**

Company Limited's case cited supra**,** the award under challenge is modified as follows:-

1) The claimants are entitled for compensation of **Rs.6,22,000/-** with interest @7.5% p.a., instead of Rs.4,62,000/- @6%p.a.
2) The claimants are entitled for their respective share of compensation awarded under the head of loss of Consortium.
3) Compensation awarded under the heads of funeral expenditure, loss of estate are allotted to the share of 1^{st} claimant.
4) Rest of the order passed by the learned MACT, stands confirmed in respect of withdrawal of compensation amount by the minor claimants.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date: 10 .03.2025
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