THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL Nos: 557 of 2017 AND 813 OF 2018

COMMON JUDGMENT:

These two appeals arise out of the award and decree 29.08.2016 in M.V.O.P.No.339 of 2014 passed by the Chairman, Motor Accident Claims Tribunal-Cum-IX Additional District Judge, Chittoor.

2. M.A.C.M.A.No.557 of 2017:

Assailing the award and decree 29.08.2016 in M.V.O.P.No.339 of 2014 passed by the Chairman, Motor Accident Claims Tribunal-Cum-IX Additional District Judge, Chittoor, respondent No.2/APSRTC has preferred the instant appeal for awarding compensation of Rs.16,95,000/- for the untimely death of R. Jaffar Saheb.

3. M.A.C.M.A.No.813 of 2018:

Assailing the award and decree 29.08.2016 in M.V.O.P.No.339 of 2014 passed by the Chairman, Motor Accident Claims Tribunal-Cum-IX Additional District Judge, Chittoor, petitioners/appellants have preferred the instant appeal seeking enhancement of compensation.

4. Both the appeals are disposed of by this common judgment. The parties are being referred to as 'petitioners' and 'respondents' as arrayed in the petition before the Tribunal, for the sake of convenience and clarity.

5. **The case of the petitioners is thus**:

On 21.09.2011 at about 11.15 A.M., while the deceased proceeding to Chittoor on his motor cycle bearing No.AP 03 AH 3379 and when he reached Chittoor-Tirupathi road near Vijayanagar colony road cross, the driver of the lorry bearing No.AP 16 X 9368 drove the same in a rash and negligent manner and dashed against the deceased and as a result of which,

deceased/R. Jaffar Saheb fell down on the road and rear wheels of the lorry ran over the head of the deceased and he died on the spot. As on the date of the accident, deceased hale and healthy, aged about 44 years, working as sub-dealer and was earning Rs.25,000/- per month by working in Bhagyalakshmi Bajaj Dealer at Chittoor and contributing the same for maintenance of his family. Due to his sudden demise, all the petitioners, who are dependants and legal representatives of the deceased lost their financial support as well as love and affection. Since the accident occurred due to the rash and negligent driving of driver of the lorry bearing No.AP 16 X 9368, a case in Crime No.65 of 2011 is registered of the offence under Section 304-A of the Indian Penal Code (hereinafter referred to as 'the Code'), against the driver of the offending vehicle. Respondent No.1 is driver, respondent No.2 is insurer of the said lorry and as such, both the respondents are jointly and severally liable to pay the compensation.

6. Having received summons, respondent no.1 remained *ex parte*. Respondent No.2 filed written statement refuting the averments made in the petition, wherein, *inter alia* contended that the driver of the lorry had no valid driving license, as on the date of accident, there was no negligence on the part of the driver of the lorry, police have not properly investigated the case and falsely laid charge sheet, petitioners claimed excessive compensation, and with other formal denials, prayed to dismiss the petition.

7. Taking into consideration of the aforementioned pleadings, the learned Tribunal settled the following issues:

> 1) Whether the accident in question was caused due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 X 9368 or due to rash and negligent driving by the deceased motor cycle bearing No.AP 03 AH 33779 or by both?
>
> 2) Whether the petitioners are entitled for any compensation, if so, to what amount and from whom?
>
> 3) To what relief?

8. During trial, petitioner No.1 examined herself as P.W.1 and the petitioners have got examined independent witnesses as PW Nos.2 and 3, and filed EXs.A1 to A14 and X1 and X2 documents. As against the said evidence, respondents have not adduced any oral evidence but filed EX.B1/Policy document. At the culmination of trial, learned Tribunal awarded compensation of Rs.16,95,000/- for the untimely death of R. Jaffar Saheb.

9. Being aggrieved by the said award and decree, the respondent No.2/appellant preferred MACMA No.557 of 2017, urging the principal grounds that:

(i) The award and decree of the learned Tribunal is contrary to law, weight of evidence and probabilities of the case.

(ii) The learned Tribunal failed to consider the evidence of P.W.3 and erroneously assessed the income of the deceased at Rs.12,000/- per month.

(iii) The learned Tribunal erred in applying the multiplier '15' instead of '14' and ought to have deducted 1/3rd of the income towards personal expenses instead of 1/4th as the claimants are three persons, and with other formal grounds, prayed to allow the appeal.

10. Being aggrieved by the said award and decree, the petitioners/claimants preferred MACMA No.813 of 2018, urging the principal grounds that:

(i) The award and decree of the learned Tribunal is contrary to law, weight of evidence and probabilities of the case.

(ii) The learned Tribunal ought to have considered EXs.A6 and 9 to 13 to come to conclusion that monthly income of the deceased at Rs.25,000/- per month.

(iii) The learned Tribunal failed to consider the evidence available on record and erred in taking income of the deceased at Rs.12,000/- per month.

(iv) The learned Tribunal failed to award compensation under various heads including transportation, love and affection, care and guidance of minor children and future prospects of the deceased.

(v) The learned Tribunal erred in considering the established principles of law to award just and fair compensation, and with other formal grounds, prayed to allow the appeal.

11. Heard both sides.

12. Perused petition and other material available on record including the impugned award dated 29.08.2016.

13. On hearing both sides and upon perusing the material placed on record, the points that would arise for consideration are as follows:

(1) Whether R. Jaffar Saheb died in the accident dated 21.09.2011 occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 X 9368 or due to the rash and negligent driving by the deceased motor cycle bearing No.AP 03 AH 3379 or due to contributory negligence?

(2) Whether the petitioners are entitled for compensation? If so, to what amount?

(3) Whether the award and decree dated 29.08.2016 in M.V.O.P.No.339 of 2014 passed by the Chairman, Motor Accident Claims Tribunal-cum-IX Additional District Judge, Chittoor, are sustainable in facts and law?

(4) To what relief?

14. Being the first appellate court and final fact finding court, this court has to re-examine and re-appreciate the entire oral as well as documentary evidence on record.

15. **Point No.1:**

(a) Now, it is necessary to analyze the evidence on record to answer the points. As seen from the record, during trial, petitioner No.1 filed examination-in-chief affidavit in lieu of chief examination by reiterating the averments mentioned in the petition. In order to prove the manner and method of accident, petitioners relied upon the evidence of P.W.2 coupled with Exs.A1 to A5. It is evident from the record that PW.1 who is wife of the deceased is not an eye witness to the accident and the only available evidence to prove the manner and method of accident is that of P.W.2 and he testified that on 21.09.2011 at about 10.00 A.M, he started from his village on his motor cycle so as to go to Chittoor and at about 11.15 A.M, while he was going near Vijayanagar colony, Tirupati-Chittoor road, the driver of the lorry bearing No.AP 16 X 9368 drove the same in a rash and negligent manner and dashed against the motor cycle of the deceased and as a result, deceased fell down on the road, wheels of the lorry ran over the head of deceased and he died on the spot. Nothing useful material is elicited in the cross examination of P.W.2.

(b) Further, Ex.A1/First information report and Ex.A2/Charge sheet also clearly reveal that the accident occurred only due to the rash and negligent driving of the driver of the lorry. So, the evidence of PW No.2 coupled with the Ex.A1 and Ex.A2 clinchingly proves that the accident occurred due to the rash and negligent driving of driver of the lorry. There is no rebuttal evidence to that effect. Further, respondent No.2 has not examined the driver of the lorry who is the best person to speak about the accident and his non-examination is fatal to the case of the respondents. Ex.A3/Postmortem report and Ex.A4/Accident information report reveal that the deceased sustained injuries in the accident and succumbed to the said injuries. Further, as per Ex.A5/Motor Vehicles Inspector report, accident not occurred due to any mechanical defect. Therefore, this court is of the considered view that the

accident occurred only due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 X 9368, Sri R. Jaffar Saheb/deceased sustained injuries in the said accident and succumbed to the said injuries. Hence, this point is answered in the affirmative and in favour of the petitioners.

16. **Point No.2:**

(a) As per the version of petitioners, petitioner No.1 is wife and petitioner Nos.2 and 3 are minor children of the deceased, deceased hale and healthy, aged about 44 years, working as sub-dealer in Bhagyalakshmi Bajaj Dealer at Chittoor and was earning Rs.25,000/- per month, as on the date of the accident and due to his sudden demise, the petitioners lost their financial support as well as love and affection. As seen from A3/Post-mortem report and Ex.A4/Accident information report, age of the deceased is mentioned as 44 years. There is no contra evidence to that effect. So, it can safely be concluded that the age of the deceased was 44 years as on the date of accident and the relevant multiplier is '14'. The petitioners who are none other than the legal representatives and dependants of the deceased are entitled for compensation.

(b) So far as earnings of the deceased is concerned, petitioners have got examined PW.3/K. Sivasankari/Dealer of Bajaj Auto Limited and having filed EXs.X1/Attested copy of letter of appointment and EX.2/Attested copy of income tax returns of their form and having admitted EXs.A10 to 12/Bill books of R.R. Auto Mobiles, Appointment letter and Notebook maintained by the deceased, P.W.3 stated that she is dealer of Bajaj Auto Limited and she appointed the deceased as her sub dealer vide EX.A11/Appointment letter dated 30.11.2006, he worked as sub dealer till the date of accident. As seen from EXs.A10 to A14, X1 and X2, deceased took sub-dealership for sale of motorcycles, did that business till his death. Added to it, in EX.X2/Income tax returns of the form of P.W.3 also, there is reference about payment made by the deceased in respect of the said business and except posing suggestions,

nothing useful material is elicited in the cross examination of P.W.3. There is no reason to disbelieve the evidence of P.W.3 which is supported by impeccable documents. The learned Tribunal erred in considering the earnings of the deceased at Rs.12,000/- per month, to award compensation. It is established principle of law that just and fair compensation is to be awarded to the petitioners. The petitioners have categorically established the fact of doing business/sub-dealership for sale of motorcycles by the deceased and though petitioners failed to adduce evidence regarding actual earnings of the deceased, in the given facts and circumstances coupled with EXs.A10 to 14, X1 and X2, monthly earnings of the deceased have to be determined at Rs.20,000/- per month. The learned Tribunal erred in deducting 1/4th of the income towards personal expenses of the deceased though this petition is filed by the three dependents and as such, 1/3rd of the income has to be deducted towards personal expenses of the deceased.

(c) Applying the principles in ***Sarala Varma and Others Vs. Delhi Transport Corporation and another[1], National Insurance Company Ltd Vs. Pranay Sethi and others[2]*** and ***Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others[3],*** this court has assessed the compensation as follows:

Sl. No.	**Heads**		**Calculation**
1.	Annual Income (Rs.20,000 X 12)	Rs.	2,40,000.00
2.	Deduction towards personal expenses (2,40,000x1/3)	Rs.	80,000.00
3.	Total income (2,40,000-80,000)	Rs.	1,60,000.00
4.	Future prospects (25% of 1,60,000)	Rs.	40,000.00
5.	Total loss of dependency (1,60,000+40,000) = 2,00,000x14	Rs.	28,00,000.00
6.	Loss of consortium (40,000x3) (spousal+parental)	Rs.	1,20,000.00

[1] (2009) 6 SCC 121
[2] (2017) 16 SCC 680
[3] (2018) 18 SCC 130

7.	Funeral expenses	Rs.	15,000.00
8.	Loss of estate	Rs.	15,000.00
	Total	Rs.	**29,50,000/-**

(d) In the given facts and circumstances of the case, petitioners are entitled for **Rs.29,50,000/- (Rupees Twenty Nine Lakhs Fifty Thousand Only)** and in this courts well considered view, the compensation awarded is just, adequate and reasonable, as the deceased left his dependents.

(e) So far as liability of the respondents is concerned, a finding is already recorded in point No.1 holding that the accident occurred due to the rash and negligent driving of driver of the lorry. It is not in dispute that EX.B1/Policy of the offending vehicle was in force as on the date of the accident and as such, respondent No.2 is liable to pay compensation. Hence, this point is answered holding that respondent Nos.1 and 2 are jointly and severally liable to pay compensation.

17. Point No.3:

Upon reappraisal of the evidence on record, and for the foregoing reasons, this court came to the conclusion that the learned Tribunal erred in assessing the quantum of compensation and as such, the same is liable to be modified. Hence, this point is answered accordingly.

18. Point No.4:

MACMA.No.557 of 2017:

In the result, and in view of the findings in point Nos.1 to 3, this Motor Accident Civil Miscellaneous Appeal is dismissed.

MACMA.No.813 of 2018:

In the result, and in view of the findings in point Nos.1 to 3, this Motor Accident Civil Miscellaneous Appeal is allowed, and the compensation awarded by the learned Tribunal is enhanced **from Rs.16,95,000/- (Rupees Sixteen Lakhs Ninety Five Thousand only) to Rs.29,50,000/- (Rupees Twenty Nine Lakhs Fifty Thousand Only)** together with interest at the same rate as awarded by the Tribunal, from the date of the claim petition till the date of realization.

(ii) Out of the said compensation amount, **Rs.23,50,000/- (Rupees Twenty Three Lakhs Fifty Thousand Only)** is awarded to the petitioner No.1, **Rs.3,00,000/- (Rupees Three Lakhs Only) each** is awarded to the petitioner Nos.2 & 3. Apportionment is ordered accordingly.

(iii) Time for deposit, as aforesaid, with interest, excluding the amount, if any, already deposited, is one (1) month from the date of receipt of a copy of this judgment.

(iv) On such deposit, petitioners are permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, already paid.

(v) There shall be no order as to costs.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

Dt: 02.11.2026
Vns

Whether the order is :

Speaking Yes/No ✓ / Reasoned Yes/No

Reportable Yes/No ✓ / Non-Reportable Yes/No