

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 966/2019

Between:

1. MUKALA VARA LAKSHMI, W/O LATE VENKATA RAO, AGED ABOUT 49 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
2. MUKALA SUDHEER KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 28 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
3. MUKALA SRIDHARA KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 27 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.

...APPELLANTS

AND

1. BHUMI NAGA SATYANARAYANA, S/O VENKATA RAO, AGED ABOUT 35 YEARS, DRIVER OF APSRTC BUS NO.AP 37 Z 0032 OF BHIMAVARAM DEPOT, BADGE NO.7-2-47, R/O T.NARSAPURAM, DHARMAJIGUDEM MANDAL, WEST GODAVARI DISTRICT.
2. THE ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP., BY ITS VICE CHAIRMAN AND MANAGING DIRECTOR, OWNER OF APSRTC BUS BEARING NO. AP 37 Z 0032 OF BHIMAVARAM DEPOT, MUSHEERABAD, HYDERABAD.

...RESPONDENTS

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 86/2019

Between:

1. APSRTC, REP., BY ITS VICE CHAIRMAN AND MANAGING DIRECTOR, OWNER OF APSRTC BUS BEARING NO. AP-37-Z-0032 OF BHIMAVARAM DEPOT, MUSHEERABAD, HYDERABAD NOW AT VIJAYAWADA.

...APPELLANT

AND

1. MUKALA VARA LAKSHMI, W/O LATE VENKATA RAO AGED ABOUT 48 YEARS, HOUSEWIFE, R/O D.NO. 2-72 MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
2. MUKALA SUDHEER KUMAR, S/O LATE VENKATA RAO AGED ABOUT 28 YEARS, R/O D.NO. 2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
3. MUKALA SRIDHAR KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 26 YEARS, R/O D.NO. 2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
4. BHUMI NAGA SATYANARAYANA, S/O VENKATA RAO, AGED ABOUT 35 YEARS, DRIVER OF APSRTC BUS BEARING NO. AP-37-Z-0032 OF BHIMAVARAM DEPOT, BAGE NO. 7-2-47, R/O T.NARASAPURAM, DHARMAJIGUDEM MANDAL, WEST GODAVARI DISTRICT.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED : 08.05.2024

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

A.V.RAVINDRA BABU, J

APHC010304952019



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

[3364]

WEDNESDAY, THE EIGHTH DAY OF MAY TWO THOUSAND AND
TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 966/2019

Between:

1. MUKALA VARA LAKSHMI, W/O LATE VENKATA RAO, AGED ABOUT 49 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
2. MUKALA SUDHEER KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 28 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.
3. MUKALA SRIDHARA KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 27 YEARS, R/O D.NO.2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.

...APPELLANTS

AND

1. BHUMI NAGA SATYANARAYANA, S/O VENKATA RAO, AGED ABOUT 35 YEARS, DRIVER OF APSRTC BUS NO.AP 37 Z 0032 OF BHIMAVARAM DEPOT, BADGE NO.7-2-47, R/O T.NARSAPURAM, DHARMAJIGUDEM MANDAL, WEST GODAVARI DISTRICT.
2. THE ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, REP., BY ITS VICE CHAIRMAN AND MANAGING DIRECTOR, OWNER OF APSRTC BUS BEARING NO. AP 37 Z 0032 OF BHIMAVARAM DEPOT, MUSHEERABAD, HYDERABAD.

...RESPONDENTS

Counsel for the Appellant(S):

SRISAI GANGADHAR CHAMARTY

Counsel for the Respondent(S):

SRI VINOD KUMAR TARLADA (SC FOR APSRTC)

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 86/2019

Between:

1. APSRTC, REP., BY ITS VICE CHAIRMAN AND MANAGING DIRECTOR, OWNER OF APSRTC BUS BEARING NO. AP-37-Z-0032 OF BHIMAVARAM DEPOT, MUSHEERABAD, HYDERABAD NOW AT VIJAYAWADA.

...APPELLANT

AND

1. MUKALA VARA LAKSHMI, W/O LATE VENKATA RAO AGED ABOUT 48 YEARS, HOUSEWIFE, R/O D.NO. 2-72 MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.

2. MUKALA SUDHEER KUMAR, S/O LATE VENKATA RAO AGED ABOUT 28 YEARS, R/O D.NO. 2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.

3. MUKALA SRIDHAR KUMAR, S/O LATE VENKATA RAO, AGED ABOUT 26 YEARS, R/O D.NO. 2-72, MAIN ROAD, MUNDURU, PEDAVEGI MANDAL, WEST GODAVARI DISTRICT.

4. BHUMI NAGA SATYANARAYANA, S/O VENKATA RAO, AGED ABOUT 35 YEARS, DRIVER OF APSRTC BUS BEARING NO. AP-37-Z-0032 OF BHIMAVARAM DEPOT, BAGE NO. 7-2-47, R/O T.NARASAPURAM, DHARMAJIGUDEM MANDAL, WEST GODAVARI DISTRICT.

...RESPONDENTS

Counsel for the Appellant:

VINOD KUMAR TARLADA (SC FOR APSRTC)

Counsel for the Respondent(S):

SAI GANGADHAR CHAMARTY

Cases referred:

2017(16) SCC 680
(2009) 6 Supreme Court Cases 121

The Court made the following common:

JUDGMENT:-

M.A.C.M.A.No.966 of 2019:

Challenge in this MACMA made by the appellants is to the award, dated 05.07.2018 in M.V.O.P.No.413 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District & Sessions Judge, West Godavari at Eluru ("Tribunal" for short), whereunder the tribunal dealing with a claim for compensation of Rs.25,00,000/- on account of death of Mukala Venkata Rao (hereinafter will be referred to as "deceased") in a motor vehicle accident, which was occurred on 17.03.2015, awarded a sum of Rs.15,32,500/- towards compensation and apportioned as Rs.10,32,500/- to the first petitioner and Rs.2,50,000/- each to the petitioners 2 and 3.

M.A.C.M.A.No.86 of 2019:

2) Challenge in this MACMA made by the unsuccessful second respondent/APSRTC is to the award, dated 05.07.2018 in M.V.O.P.No.413 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District & Sessions Judge, West Godavari at Eluru ("Tribunal" for short), questioning the quantum of compensation and further with a contention that APSRTC is not liable to pay any compensation.

3) Both MACMA Nos.966 of 2019 and 86 of 2019 arose as against the award, dated 05.07.2018 in M.V.O.P.No.413 of 2015 as such they can conveniently dispose of by virtue of a common judgment.

4) The parties to this MACMA will hereinafter be referred to as described before the tribunal for the sake of convenience.

5) The case of the petitioners, in brief, according to the averments set out in the claim before the tribunal, is that the first petitioner is wife of deceased and petitioners 2 and 3 are sons of the deceased, aged about 24 years and 23 years respectively and they used to reside along with their mother as on the date of death of deceased.

On 17.03.2015 morning the deceased left his house, Munduru on his Hero Honda Passion Plus Motorcycle bearing No.A.P.37-AP-6266 in order to go to Seetharampuram to attend his personal work at his relatives house. On the way when he reached near the culvert and brick kiln of Bondada Srinivas on Eluru-Jangareddigudem road, outskirts of Munduru village, Pedavegi Mandal, West Godavari District at about 8.50 a.m., one APSRTC bus bearing No.A.P.37-Z-0032 (hereinafter will be referred to as "offending vehicle") which was coming from Bhadrachalam and proceeding towards Bhimavaram and driven by its driver first respondent in a rash and negligent manner, at high speed, without following traffic rules, dashed against the motorcycle of the deceased. As a result, the deceased fell down on the road along with his motorcycle and sustained severe injuries on all vital parts of his body. The deceased during his shifting to the hospital died on the way. The Station House Officer, Pedavegi Police Station registered FIR in Crime No.46 of 2015 under Section 304-A of the Indian Penal Code. The deceased was aged about 47 years, hale and healthy and earning Rs.28,000/- per annum as cultivating tenant, milk vendor, kirana and general merchant and also by running a tea hotel and cool drinks business, but due to his sudden

demise, the petitioners being the dependants on his earnings, lost their dependency and also love and affection. Hence, the petition.

6) The first respondent, driver of the offending vehicle remained *exparte*.

7) The second respondent/APSRTC got filed a written statement by denying the averments in the petition and putting the burden on the petitioners to prove the manner of accident and the rash and negligent act against the first respondent and their dependency. There was no negligence on the part of first respondent in the occurrence of accident, but the accident took place due to own fault of the deceased. Hence, the respondents are not liable to pay any compensation.

8) On the basis of the above pleadings, the tribunal settled the following issues for trail:

(1) Whether Mukala Venakta Rao died in a motor accident that took place on 17.03.2015 at 8-50 a.m., near culvert and brick kiln of Bondada Srinivas on Eluru-Jangareddigudem road and the same was occurred due to rash and negligent driving made by the driver of APSRTC bus bearing No.A.P.37-Z-0032 i.e., first respondent or due to rash and negligent riding of motorcycle bearing No.A.P.37-0AP-6266 by the deceased?

(2) Whether the petitioners are entitled to claim compensation, if so, to what extent and from which of the respondents?

(3) To what relief?

9) During the course of enquiry, on behalf of the petitioners, P.W.1 to P.W.6 were examined and Ex.A.1 to Ex.A.17 were marked. The

second respondent examined the first respondent as R.W.1 (remained *exparte*) and no documents were marked.

10) The tribunal on hearing both sides and on considering the oral as well as documentary evidence gave findings that the accident occurred was due to rash and negligent driving made by the driver of the offending vehicle and that the petitioners are able to prove that the deceased used to cultivate the lands of others as lessee and further he used to sell the milk and further he used to run a cool drink shop. The tribunal made further finding that the petitioners did not prove the exact income of the deceased, as such, it is reasonable to consider the earnings of the deceased as Rs.5,000/- by agriculture; Rs.5,000/- by doing milk sale and Rs.5,000/- by running a cool drink shop. The tribunal gave finding that the first petitioner was only a dependant and though the petitioners 2 and 3 are class-I legal heirs, but they are only entitled to nominal compensation. The tribunal arrived at the income of the deceased as Rs.15,000/- + Rs.3,750/- towards future prospects at 25% thereby Rs.18,750/- and applied multiplier '12' thereby Rs.2,25,000/- was arrived at. The tribunal deducted half of the amount towards personal and living expenses and arrived at multiplicand as Rs.14,62,500/- and awarded conventional heads of Rs.70,000/- in view of the judgment in **National Insurance Company Limited vs. Pranay Sethi and others**¹ and awarded total compensation of Rs.15,32,500/-.

11) Felt aggrieved of the aforesaid award, the petitioners filed MACMA No.966 of 2019 with a prayer to enhance the compensation.

12) APSRTC/second respondent felt aggrieved of the aforesaid award, filed MACMA No.86 of 2019 with a contention that the tribunal did not consider the rash and negligent act alleged against the first

¹ 2017(16) SCC 680

respondent properly though there was a contributory negligence on the part of the deceased and that the tribunal awarded excessive compensation.

13) In the light of the above, in deciding the present MACMAs, the points that arise for determination are as follows:

(1) Whether the petitioners proved before the tribunal that the accident occurred was due to rash and negligent driving made by the driver of offending vehicle/APSRTC i.e., first respondent?

(2) Whether the award, dated 05.07.2018 in M.V.O.P.No.413 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District & Sessions Judge, West Godavari at Eluru, in awarding compensation of Rs.15,32,500/- as against the original claim of Rs.25,00,000/-, is sustainable under law and facts and whether there are any grounds to enhance the compensation?

(3) Whether the tribunal awarded excessive compensation as contended by the appellant in MACMA No.86 of 2019?

POINTS:-

14) Sri Sai Gangadhar Chamarthy, learned counsel for the appellants in MACMA No.966 of 2019, would contend that P.W.2 was a direct witness to the occurrence explaining the manner in which the accident was occurred. The police registered FIR under Section 304-A of the Indian Penal Code against the first respondent and after concluding the investigation filed charge sheet. R.W.1 categorically admitted this fact in cross examination. The tribunal rightly held that the accident occurred was due to rash and negligent driving made by the driver of the offending vehicle i.e., first respondent. He would submit that

though the deceased was doing agriculture by cultivating the lands of P.W.3 and P.W.4, the tribunal did not ascertain the agricultural income properly. Even the tribunal arrived at the figure of Rs.15,000/- as monthly income of the deceased erroneously and the income ought to have been fixed in higher scale. Simply because there was no lease agreement between the deceased and P.W.3 & P.W.4 the evidence of P.W.3 and P.W.4 cannot be brushed aside. The petitioners 2 and 3 used to reside along with their parents in a single door number and they were depending upon the father. On account of the death of deceased, petitioners were not able to continue the business and agriculture. Though the petitioners 2 and 3 are the majors but they are the class-I legal heirs and they are depending on the income of the deceased. The tribunal deducted half of the amount towards personal and living expenses instead of deducting one-third of the amount. As the tribunal applied erroneously the deduction of half of the amount, the claim of compensation was considerably decreased. With the above submissions, he would contend that the compensation is liable to be enhanced.

15) Sri Vinod Kumar Tarlada, learned standing counsel appearing for the second respondent in MACMA No.966 of 2019 and further for appellant in MACMA No.86 of 2019, would contend that there was a contributory negligence on the part of the deceased in driving his motorcycle. The tribunal did not appreciate the evidence in proper perspective in this regard. The tribunal failed to look into contributory negligence made by the deceased. The tribunal without there being any basis arrived at monthly income of the deceased as Rs.15,000/- which is on higher side and further erroneously applied the multiplier '13' and further erroneously awarded 25% of the future prospects. He would contend that the compensation awarded by the tribunal is excessive and further in the light of the contributory negligence, the compensation needs to be reduced considerably.

16) As seen from the evidence of P.W.1, he is the second petitioner. He got filed his chief examination affidavit putting forth the facts in tune with the pleadings. Through his examination Ex.A.1 to Ex.A.17 were marked. Apart from this, his evidence is also that his father was doing kirana business, milk business, hotel business and agriculture. He took Ac.11-00 cents of land on lease from Mukale Ramesh and B. Srinivasa Rao. They are not able to run the business on account of death of his father. His father used to get income of Rs.35,000/- per month. On account of death of his father, their businesses were closed, as they are not capable to do business. He joined in a medical store as assistant after death of his father and he used to get meagre amount.

17) The petitioners examined P.W.2, the direct witness to the occurrence. He testified the fact that on 17.03.2015 he and one Bondada Sreenivasu left the brick kiln of Bondada Srinivas to return to their houses. They reached the culvert at brick kiln at 8-50 a.m. They found APSRTC bus being driven by the first respondent in a rash and negligent manner and hit the Hero Honda Passion Plus motorcycle of the deceased. The deceased fell down on the road and received multiple injuries. During shifting to the hospital at Eluru, he died on the way. His name was shown as a witness in Ex.A.5 charge sheet.

18) As seen from the evidence of P.W.2, he was a witness to the occurrence. However, the contesting respondent got done cross examination of P.W.2 and in cross examination he denied that the accident occurred was due to rash and negligent driving made by the deceased while riding the motorcycle. Though the first respondent, who remained exparte, stepped into witness box on behalf of the second respondent as R.W.1 and adverted to the facts in tune with the pleadings in counter of the second respondent, but he categorically admitted in cross examination about the factum of registration of a case against him

and filing of charge sheet alleging that he drove the offending vehicle in a rash and negligent manner and caused the death of deceased. If really there was contributory negligence on the part of deceased, R.W.1 would not have kept quiet and would have lodged a report alleging the negligent act of the deceased. Apart from this, the police found favour in the case of the petitioners and after conclusion of investigation filed charge sheet. The evidence of P.W.1, who was the second petitioner, has support on account of the outcome of investigation and further from the evidence of P.W.2. The theory of contributory negligence alleged by the second respondent was not at all probabalized. Hence, the tribunal rightly held that the accident occurred was due to rash and negligent act of the driver of the offending vehicle.

19) Now coming to the quantum of compensation, there is no dispute that the first petitioner is wife and petitioners 2 and 3 are sons of the deceased. The ages of the petitioners 2 and 3 in the claim petition were shown as 24 years and 23 years respectively. Addresses of the petitioners 1 to 3 are shown as D.No.2-72, Main Road, Munduru, Pedavegi Mandal. As on the date of claim and as on the date of death of the deceased they used to reside together. They are no other than the class-I legal heirs of the deceased. It is to be noted that after arrived at probable income of the deceased, the tribunal deducted half of the amount towards personal and living expenses. The finding of the tribunal is that petitioners 2 and 3 are major sons of the deceased, as such, they cannot be labelled as dependants. The addresses of the petitioners 1 to 3 are in one house. They are kith and kin of the deceased. The evidence of P.W.1 is not at all challenged by suggesting anything in cross examination that the petitioners 2 and 3 are earning their own income as on the date of death of deceased or even subsequent thereto. The evidence of P.W.1 is that he joined as a store assistant in a medical store and he is getting meagre income.

20) Apart from the above, according to the judgment in **Sarla Verma and others vs. Delhi Transport Corporation and another**² when the dependants are 2 to 3, one-third probable income of the deceased is to be deducted towards personal and living expenses. The observations of the Hon'ble Supreme Court at para Nos.31 and 32 are as follows:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

² (2009) 6 Supreme Court Cases 121

21) It is to be noted that the Hon'ble Supreme Court dealing with the status of a bachelor in *Sarla Verma's case (2 supra)* was of the view that subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. The Hon'ble Supreme Court further held that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. Even according to the decision of the Hon'ble Supreme Court if the deceased was a bachelor, mother alone will be dependant as father is likely to have his own income. Even the Hon'ble Supreme Court held that if there is large number of younger non-earning sisters or brothers, one-third may be deducted.

22) Now, coming to the status of the petitioners 2 and 3, they are in better footing than sister or brother of the deceased. They are no other than the sons of the deceased, who are aged about 24 years and 23 years respectively. When P.W.1 testified that on account of death of their father, they are not able to continue the agricultural operations or business or milk selling, no contra theory is suggested on behalf of the contesting second respondent. The second respondent did not probablize any theory that either as on the date of death of deceased or subsequent thereto petitioners 2 and 3 were having their independent income. The finding of facts recorded by the tribunal is without reasons. The evidence on record amply proves the fact that apart from the first petitioner, who is wife of deceased, petitioners 2 and 3, who are sons of deceased and who are residing along with deceased, are also dependants. Of course, it is a matter of discretion of the tribunal to make reasonable apportionment of compensation in the given situation.

Hence, this Court is of the considered view that the tribunal erred in deducting half of the probable income towards personal and living expenses of the deceased and proper deduction should be one-third because the petitioners are three in number.

23) Now this court would like to proceed to ascertain with the probable income of the deceased.

24) The petitioners examined P.W.3 and P.W.4, landlords. According to P.W.3, he has land to an extent of Ac.6-15 cents which was given to the deceased on lease. According to the evidence of P.W.4, he gave land to an extent of Ac.4-00 cents on lease to the deceased, who used to cultivate the same. The petitioners further examined P.W.5, who testified that there is Ex.A.6 loan credibility card in the name of deceased. He testified that P.W.3 and P.W.4 gave their agricultural lands to the deceased on lease. The entries in Ex.A.6 are such that the deceased used to cultivate the agricultural lands in an extent of Ac.10-16 cents as a tenant. The petitioners were able to probabalize that the deceased used to attend agriculture by taking lands of P.W.3 and P.W.4 on lease.

25) Turning to the income claimed by the petitioners through the deceased by way of milk selling, they exhibited Ex.A.7-bunch of membership cards and relied upon the entries relating to purchase of milk from Dairy Milk Parlour in his name. By virtue of the above and looking into Ex.A.7 entries, it is clear that the deceased used to attend milk selling. Apart from this, to probabalize a contention that the deceased used to attend kirana business and cool drinks shop also, the petitioners examined P.W.6, Village Secretary and exhibited Ex.A.8 license issued in favour of the deceased. According to him, his predecessor issued Ex.A.8 license consisting of bunch of receipts in favour of deceased to run provisions and cool drinks shop. Though Ex.A.8 much prior to the death of deceased, but in a claim of this nature the petitioners are supposed to

probabilize their contention basing on the preponderance of probabilities. The petitioners were able to prove before the tribunal that the deceased used to do agriculture by taking lands on lease and further he was also selling milk and further he was also running a kirana and cool drinks shop.

26) Turning to the income which the petitioners claimed as that of Rs.28,000/- per month as rightly pointed out by the tribunal except the oral say of P.W.1, there remained nothing in support of their contention. The period of accident was in the year 2015. The deceased was pursuing three occupations. Having regard to the overall facts and circumstances, the tribunal proceeded to ascertain the income of the deceased as that of Rs.5,000/- by way of agriculture; Rs.5,000/- by way of milk selling and Rs.5,000/- by way of running cool drinks shop. It is to be noted that the agricultural lands which the deceased taken on lease from P.W.3 and P.W.4 can be continued, if the petitioners are capable of doing agriculture. In the case of agriculture, only supervisory role of the deceased was to be looked into. Viewing the same, the notional income arrived at by the tribunal as Rs.5,000/- per month by way of agriculture is reasonable. Further the notional income arrived at by the tribunal as Rs.5,000/- by way of milk selling and Rs.5,000/- by way of running kirana and cool drinks shop is also reasonable. The contention of the petitioners that the tribunal fixed the income of deceased in lesser side and further the contention of the second respondent/APSRTC that the tribunal fixed the income of deceased in higher side is devoid of merits.

27) Now turning to the quantum of compensation to be calculated the monthly income of deceased is Rs.15,000/-. In view of *Pranay Sethi's case (1 supra)*, when the deceased was self-employed, admittedly, 25% is to be awarded towards future prospects. So, Rs.15,000/- + Rs.3,750/- towards future prospects would comes to

Rs.18,750/-. It is to be multiplied with '12' which would come to Rs.2,25,000/-. As pointed out, one-third amount is to be deducted towards personal and living expenses of the deceased, as such, it would come to Rs.75,000/-. After deducting Rs.75,000/- there remains Rs.1,50,000/- which is two-third which the deceased was supposed to contribute his family. Hence, the monthly contributions of the deceased is to be arrived at Rs.1,50,000/-. As the deceased was aged about 47 years which is quietly evident by virtue of post mortem report coupled with inquest report and there is no contra evidence on record, the proper multiplier between the age group of 46 to 50 years is '13' in view of the judgment in *Sarla Verma's case (1 supra)*. Thus, the multiplicand is to be arrived at as Rs.1,50,000/- x 13 = Rs.19,50,000/-. In view of the judgment in *Pranay Sethi's case (2 supra)* the petitioners are entitled to conventional heads to a tune of Rs.70,000/- (i.e., Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate and Rs.40,000/- towards consortium to the first petitioner). The petitioners are entitled to total compensation of Rs.20,20,000/-. As the first petitioner is wife major portion of compensation is to be given to her in the interest of justice.

28) In the result, MACMA No.966 of 2019 is allowed in part with proportionate costs enhancing the compensation from that of Rs.15,32,500/- to Rs.20,20,000/- and by apportioning the quantum of compensation as Rs.14,20,000/- to the first petitioner and Rs.3,00,000/- each to the petitioners 2 and 3. The second respondent/APSRTC shall deposit the difference amount of Rs.4,87,500/- with interest at 7.5% per annum from the date of petition till the date of deposit within a period of one month from this day and on such deposit the petitioners are permitted to withdraw the entire compensation awarded to them.

29) Insofar as MACMA No.86 of 2019 is concerned, it is dismissed, but under the circumstances, without costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt.08.05.2024.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

**MACMA No.966 of 2019
AND
MACMA No.86 of 2019**

Date: 08.05.2024

PGR