

* THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HONOURABLE SRI JUSTICE N.VIJAY

+ M.A.C.M.A.NO: 2993/2017

%Dated: 23.10.2024

Siddinooru Aswini and 3 others Appellants

and

\$ Umesh Odapally Mahesh and another Respondents

! Counsel for the Appellants: Sri K.V.Raghuveer, representing Sri
C.Vikram Chandra,

^ Counsel for the 2nd Respondent : Sri B.Parameswara Rao

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2017) 16 SCC 680
2. (2021) 2 SCC 166
3. (2018) 15 SCC 654
4. (2021) 17 SCC 148
5. (2018) 18 SCC 130
6. (2022) SCC OnLine SC 1683
7. (2021) 11 SCC 780
8. 2024 SCC OnLine SC 1901.
9. (2015) 1 SCC 539
10. (2015) 1 SCC 539
11. (2021) 6 SCC 188
12. (2021) 2 SCC 166
13. (2022) SCC OnLine SC 1683
14. (2020) 4 SCC 228

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

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M.A.C.M.A. NO: 2993/2017

Siddinooru Aswini and 3 others Appellants

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DATE OF ORDER PRONOUNCED: 23.10.2024

(per Hon'ble Sri Justice Ravi Nath Tilhari)

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their Lordship wishes
to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

N.VIJAY, J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE N.VIJAY

M.A.C.M.A. NO: 2993/2017

JUDGMENT: *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri K.V.Raghuveer, learned counsel representing Sri C.Vikram Chandra, learned counsel for the appellants and Sri B.Parameswara Rao, learned counsel for respondent No.2-insurance company.

2. This appeal under Section 173 of the Motor Vehicles Act (for short 'the M.V.Act) has been filed by the claimants for enhancement of the amount of compensation as awarded by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur (in short 'the Tribunal') in M.V.O.P.No.667 of 2013 vide awarded dated 11.07.2017.

3. The claim petition was filed by the appellants for the death of Siddinooru Sachin (in short 'the deceased') in the motor accident which occurred on 15.04.2013 at about 1.30 a.m. in Veshi Tanda on NH-44 leading to Nizamabad to Hyderabad in Duitchpalli Mandal, Nizamabad District, for compensation amount of Rs.1,51,00,000/-. The deceased was aged about 35 years and was working as Software Engineer in DELL International Services

India (P) Ltd., in Hyderabad. His monthly income was stated to be Rs.65,430/-. The deceased was coming in the offending vehicle on the date of the accident with his friend.

4. The 1st appellant/petitioner is the wife, the 2nd appellant is the minor daughter and the 3rd appellant is father and 4th appellant is the mother of the deceased.

5. The 1st respondent is the owner-cum-driver of the Maruti Ritz car bearing No.AP 29 A 8430, who was said to be driven the car rashly and negligently. The 2nd respondent-New India Assurance Company Ltd. was the insurer of the offending vehicle.

6. The 1st respondent filed written statement denying the averments of the claim petition but admitting that he was the owner of the offending vehicle, which was insured with the 2nd respondent. He denied any negligence on his part as also the liability to pay compensation. It was pleaded that the offending car turned turtle due to the burst of the tyre. It was also stated that the 3rd appellant was not the dependent of the deceased as he was retired Central Government employee, who worked in D.R.D.O Office and was getting pension and was also doing

business. The compensation amount as claimed by the appellants was said to be excessive.

7. The 2nd respondent-insurance company also filed written statement denying the averments of the claim petition and also the jurisdiction of the Tribunal in the matter and submitting further that the claimants be put to the proof of the averments of the claim petition.

8. The insurance company also filed additional written statement *inter alia* submitting that the claimants were not entitled to seek the enhanced compensation and the interest on such amount, which in any case, could be only from the date of amendment and not from the date of filing of the petition.

9. The Tribunal framed the following issues:

1. *Whether the death of Siddinooru Sachin was caused by rash and negligent driving of Maruthi Car bearing No.AP 29 A 8430?*
2. *Whether the petitioners are entitled to compensation, if so, to what amount, and against whom?*
3. *To what relief?*

10. The claim petitioners, in evidence, examined the first claimant as PW.1 and one witness as PW.2 and exhibited Exs.A1 to A8 and Exs. X1 to X7 were also marked through PW.2. The

respondents did not lead any oral evidence but Ex.B1 was marked on behalf of the 2nd respondent during cross examination of PW.2.

11. The Tribunal recorded the finding that the accident occurred due to rash and negligent driving of the offending car of the 1st respondent, in which the deceased received head injury and died on the spot. The 1st respondent was the owner-cum-driver of the offending vehicle and the 2nd respondent was the insurer. Both of them were held jointly and severally liable to pay the compensation.

12. On the point of quantum of compensation, the Tribunal considered the age of the deceased as 33 years based on Exs.A3-Charge sheet and A5-Post Mortem Certificate. As per Ex.X6-pay slip, the Tribunal determined his gross salary as Rs.67,305/- p.m. and out of the said amount, it deducted Rs.10,630/-. It also deducted an amount of Rs.7,918/- shown as holiday pay and then considered the gross salary as Rs.59,387/- p.m. It made deductions i.e. professional tax to a tune of Rs.200/- and income tax to a tune of Rs.7,229/- and arrived at the net salary as Rs.51,958/- rounded to Rs.52,000/-. The Tribunal considered the deceased as not a permanent employee in the organization, the deceased was employed. It did not grant any

amount under the head of future prospects. The annual income was taken as Rs.52,000/- x 12 = Rs.6,24,000/-. 1/3rd was deducted towards personal and living expenses of the deceased. It arrived at Rs.4,16,000/- as the loss of dependency and by applying the multiplier '16' at age of 33 years, the claimants/appellants were held entitled to an amount of Rs.66,56,000/-. To the said amount, it added Rs.1,00,000/- towards loss of consortium to the 1st claimant widow, Rs.1,00,000/- towards loss of estate. The claimants 3 and 4 being the parents were held entitled to a claim of Rs.50,000/- each towards loss of love and affection and the 2nd petitioner/claimant being minor daughter of the deceased was entitled to claim a sum of Rs. Rs.1,00,000/- towards loss of love and affection. It also awarded a sum of Rs.20,000/- towards funeral expenses and thus, in total, the claim petition was partly allowed for a sum of Rs.70,76,000/- against the claim of Rs.1,51,00,000/-. The claim was allowed with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit of the amount by the respondents.

13. The respondents have not challenged the award. Any cross objection has also not been filed by them.

14. Only the claimants have filed the appeal for enhancement.

15. Learned counsel for the appellants/claimants submitted that the Tribunal has not awarded any future prospects on the reasoning that the deceased was not the permanent employee. He submitted that even if the deceased was not the permanent employee, as he was in the private organization, still the future prospects should have been granted. He further submitted that the interest @ 7.5% is on the lower side. The Tribunal ought to have awarded the interest at 9% p.a.

16. Learned counsel for the appellants did not dispute the finding on the point of age, and income of the deceased as determined by the Tribunal nor the use of multiplier of '16', applied by the Tribunal.

17. Learned counsel for the 2nd respondent-insurance company submitted that the future prospects have rightly not been awarded. The petitioner was not in the permanent job and only in the private organization. The claimants are not entitled for any amount under the head of future prospects. He further submitted that under the conventional heads, large amount has been awarded, which is not as per the law.

18. No other argument was advanced.

19. We have considered the aforesaid submissions and perused the material on record.

20. The following point arises for our consideration:

“Whether the amount as awarded by the Tribunal is not just and fair compensation and deserves enhancement? If so, what would be the amount of compensation and with what rate of interest?”

21. Future Prospects:

With respect the grant of future prospects, even if we go by the finding that the deceased was not in the permanent job, the claimants are entitled for awarding, the future prospects. In this respect in ***National Insurance company limited v. Pranay Sethi***¹ the Hon'ble Apex Court has held as under in paras 59.3 and 59.4:

“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%

¹(2017) 16 SCC 680

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.”

22. It is evident from para 59.4 that in case the deceased was self employed or on a fixed salary, then an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years.

23. Learned counsel for the 2nd respondent-insurance company submitted that the deceased would not be covered under the expression ‘self-employed or on a fixed salary’ as in para 59.4 of ***Pranay Sethi (Supra)***. We are not convinced with the submission. In fact, para 59.4 deals with grant of future prospects, in the cases where the deceased was not in a permanent job.

24. In ***Kirti v. Oriental Insurance Company Ltd.***², on the point of addition of future prospects, as in that case both the deceased were below 40 years and they could not establish to be permanent employees, the Hon’ble Apex Court held that the future prospects to the tune of 40% must be paid. In the said case, the argument placed by the insurance company that no such future prospects ought to be allowed for those with notional income was held to be

² (2021) 2 SCC 166

both incorrect in law and without merit considering the constant inflation-induced increase in wages. The Hon'ble Apex Court quoted para 59.4 of **Pranay Sethi (Supra)** and also the case of **Hem Raj v. Oriental Insurance Co. Ltd.**³ in para Nos.12 and 13 as under:

“III. Addition of Future Prospects:

12. *Third and most importantly, it is unfair on part of the respondent insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of the [Pranay Sethi](#). Nevertheless, the law on this point is no longer res integra, and stands crystalised, as is clear from the following extract of the aforesaid Constitutional Bench judgment:*

“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.” [Emphasis supplied] “

13. *Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law and without merit considering the constant inflation induced increase in wages. It would be sufficient to quote the observations of this Court in **Hem Raj v. Oriental Insurance Co. Ltd.**⁷, as it puts at rest any argument concerning non payment of future prospects to the deceased in the present case:*

³ (2018) 15 SCC 654

“7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made.”

[emphasis supplied] “

25. Besides, in **Meena Pawaia v. Ashraf Ali**⁴, the deceased was a student. It was held that the principle which applies to the salaried person and/or deceased self-employed and/or a fixed salaried person and/or deceased self employed and/or a fixed salaried deceased, applies to the deceased who was not serving and/or was not having any income at the time of accident. In the said case, which was a case of the death of the student, the Hon’ble Apex Court applied para No.59.4 of **Pranay Sethi** (Supra) and awarded 40% of the income, determined as future prospects.

Para Nos.13 to 16 are as follows:

“ We see no reason why the aforesaid principle may not be applied, which apply to the salaried person and/or deceased self-employed and/or a fixed salaried person and/or deceased self employed and/or a fixed salaried deceased, to the deceased who was not serving and/or was not having any income at the time of accident/death. In case of a deceased, who was not earning and/or not doing any job and/or self-employed at the time of accident/death, as observed herein above his income is to be determined on the guess work looking to the circumstances narrated hereinabove. Once such an amount is arrived at he shall be

⁴ (2021) 17 SCC 148

entitled to the addition over the future prospect/future rise in income. It cannot be disputed that the rise in cost of living would also affect such a person.

14. *As observed by this Court in [Pranay Sethi](#), the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under [Section 168](#) of the Motor Vehicles Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/or in case of a deceased who was on a fixed salary and /or self employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite. Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance.*

15. *It is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. As observed in [Pranay Sethi](#) (Supra) to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of [Pranay Sethi](#) (supra) i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years.”*

26. Accordingly, we are of the view that the deceased being below the age of 40 years and in the private organization would be covered under para 59.4 of ***Pranay Sethi (Supra)***. The claimants are therefore entitled for 40% of the established income towards future prospects.

27. Conventional heads:

Under this head, and different sub-heads, the Tribunal awarded total amount of Rs.4,20,000/-. The same is in excess and not as per the settled law. Accordingly, we reduce the amount under the conventional heads as granted by the Tribunal and award as per the law laid down in the judgments, in ***Pranay Sethi (supra) Magma National Insurance Company Limited vs Nanu Ram @ Chuhru Ram and Ors.***,⁵ ***Smt. Anjali and Others V. Lokendra Rathod and Others***,⁶ ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.***,⁷ and ***Rojalini Nayak and Others vs Ajit Sahoo and Others***⁸ we award the amounts under the Conventional Heads, for loss of Consortium, loss of Estate and funeral expenses, as Rs.48,400/- (per claimant), Rs.18,150/- and Rs.18,150/- respectively as was awarded in ***Rojalini (Supra)***, which is with an increase of 10% every three years.

28. The Claimants are thus entitled for the following amount as just and fair compensation :-

⁵ (2018) 18 SCC 130

⁶ (2022) SCC OnLine SC 1683

⁷ (2021) 11 SCC 780

⁸ 2024 SCC OnLine SC 1901.

S. No.	Head	Compensation Awarded
1.	Net Annual Income (As per the Tribunal)	Rs. 52,000/- x 12 = Rs. 6,24,000/-
2.	Future Prospects	Rs. 2,49,600/- (i.e., 40% of the income) Total (i.e., 1+2) = Rs. 8,73,600/-
3.	Deduction towards personal expenditure (i.e. 1/3 rd)	Rs. 2,91,200/-
4.	Total Annual loss	Rs. 5,82,400/-
5.	Multiplier of 16 for the age of 33 years i.e.	16 x Rs. 5,82,400/- = Rs. 93,18,400/-
6.	Conventional Heads:	
	Loss of Consortium	Rs. 1,93,600/- (Rs. 48,400/- x 4)
	Loss of Estate	Rs. 18,150/-
	Funeral expenses	Rs. 18,150/-
7.	Total Compensation	Rs. 95,48,300/-

29. Consequently, the compensation amount granted by the Tribunal is enhanced from Rs.70,76,000/- to **Rs. 95,48,300/-**.

30. Interest:

So far as the award of interest is concerned, the Tribunal granted interest at the rate of @ 7.5% p.a. In ***Kumari Kiran vs. Sajjan Singh and others***⁹, the Hon'ble Apex Court set aside the

⁹ (2015) 1 SCC 539

judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @7.5% and awarded interest @ 9% p.a. from the date of the claim petition. In ***Kumari Kiran vs. Sajjan Singh***¹⁰, the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @7.5% and awarded interest @ 9% p.a. from the date of the claim petition. In ***Rahul Sharma vs. National Insurance Company Limited***¹¹, the Hon'ble Apex Court awarded @ 9% interest p.a. from the date of the claim petition. In ***Kirthi vs. Oriental Insurance Company Limited***¹² and in ***Smt. Anjali vs. Lokendra Rathod***¹³ also the Hon'ble Apex Court referring to ***Malarvizhi vs. United India Insurance Co. Ltd.***¹⁴, allowed interest @ 9% p.a. allowed interest @ 9% p.a. We allow interest @9% p.a.

31. On the aforesaid amount the claimants are allowed interest @ 9 % p.a. from the date of the claim petition till realization.

32. In the result,

i) The M.A.C.M.A.No.2993 of 2017 is allowed-in-part;

¹⁰ (2015) 1 SCC 539

¹¹ (2021) 6 SCC 188

¹² (2021) 2 SCC 166

¹³ (2022) SCC OnLine SC 1683

¹⁴(2020) 4 SCC 228

- ii) The appellants/claimants are granted enhanced compensation of **Rs.95,48,300/-** as just and fair, with interest @ 9% per annum thereon from the date of claim petition till realization;
- iii) The 2nd respondent-insurance company shall deposit the amount as aforesaid, adjusting the amount already deposited if any, before the Tribunal within one month, failing which the amount shall be recovered as per law;
- iv) On such deposit being made, the claimants shall be entitled to withdraw the same in the proportion as per the award,
- v) The costs throughout is made in favour of the claimants to be paid by the 2nd respondent.

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

RAVI NATH TILHARI, J

N.VIJAY, J

Date: 23.10.2024
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE N.VIJAY

M.A.C.M.A. NO: 2993/2017

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