

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY ,THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.449 of 2015

Appeal Under Section 173 of Motor Vehicles Act against the Order and Decree in MVOP.No.1287 of 2012 dated 16.05.2014 on the file of the Court of the Chairman, Motor Accident Claims Tribunal –cum- XXV Additional Chief Judge, City Civil Court, Hyderabad.

Between:

1. R.Narasimha Rao, S/o.late R.Venkateswar Rao, aged 29 years, Occ: Nill
2. R.Keerthi, W/o.Narasimha Rao, aged 23 years, Occ: Household

Both are R/o.H.No.1-23, Chinthalapadu [V], Thiruvur [M], Krishna District. Presently R/o.16-10-123, Malakpet, Hyderabad.

...APPELLANTS/PETITIONERS

AND

1. M.Ram Reddy, S/o.Venkat Reddy, Aged Major, Occ: Business R/o.H.No.6-6-247/A, Vivekananda Nagar, Hyderabad Road, Nalgonda. [Owner of the DCM Van Vearing No.AP 24 TA 6799]
2. HDFC ERGO General Insurance Company Limited, rep by its Branch Manager O/o.Road No.1, Banjara Hills, Punjagutta, Hyderabad.

[Policy No.2316200097277300000 Valid from 05.07.2011 to 04.07.2012]

[R1 exparty in lower court, hence not necessary]

...RESPONDENTS/RESPONDENTS

Counsel for the Appellants: SRI T. VISWARUPA CHARY

Counsel for the Respondent No.2: SRI KOTA SUBBA RAO

The Court delivered the following: JUDGMENT

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No.449 of 2015

JUDGMENT:

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-XXV Additional Chief Judge, City Civil Court, Hyderabad in M.V.O.P. No.1287 of 2012 dated 16.05.2014, the present appeal is filed by the claimants seeking enhancement of compensation.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.
3. According to the petitioners, on 01.12.2011 the deceased-Smt.R.Hymavathi, her husband and their relatives viz., Veera Bhadra Rao, Padmaja have started from Nandigama in order to go to Hyderabad in a car bearing No. AP.16.BV.2448 and at about 3-30 a.m. when they reached the outskirts of Pedda Kaparthy village, Chityal Mandal, one DCM van bearing No. AP.24.TA.6799 being driven by its driver came in rash and negligent manner at high speed while proceeding towards Hyderabad and dashed their car, due to which the deceased and two others crushed in the car and died on the spot and

remaining passengers of the car also sustained injuries. Hence the claimants seeking compensation of Rs.5,00,000/- with interest @ 18% per annum.

4. Respondent No.1 remained ex parte. Respondent No.2 filed counter disputing the manner of accident pleaded by the claimants and also the age, avocation and income of the deceased. It is further contended that the claim is exorbitant and sought for dismissal of the claim petition.

5. In view of the above pleadings, the Tribunal raised the following issues:

- 1) Whether the deceased died in the accident on 01.12.2011 due to the rash and negligent driving of the driver of DCM van bearing No. AP.24.RA.6799?
- 2) Whether the petitioners are entitled to any compensation, if so, from whom?
- 3) To what relief?

6. In order to prove the issues, PWs.1 and 2 were examined and got marked Exs.A-1 to A-5. On behalf of respondents, no witnesses were examined, however, copy of insurance policy was marked as Ex.B1.

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7. On considering the oral and documentary evidence on record, the Tribunal has awarded an amount of Rs.4,46,000/- towards compensation to the appellants-claimants against the respondent Nos.1 and 2 jointly and severally, along with costs and interest @ 6% per annum from the date of order till realization.

8. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for the second respondent-Insurance Company. Perused the material available on record.

9. The learned counsel for the appellants-claimants has submitted that although the claimants, by way of evidence of P.Ws.1 and 2 and Exs.A.1 to A.5, established the fact that the death of the deceased-Smt.R.Hymavathi was caused in a motor accident, the Tribunal awarded meager amount.

10. The learned Standing Counsel appearing on behalf of respondent No.2 sought to sustain the impugned award of the Tribunal contending that after considering all the aspects the learned Tribunal has awarded reasonable compensation and the same needs no interference by this Court. It is further

contended that since the petition has been filed under Section 163-A of Motor Vehicles Act, Second Schedule of Motor Vehicles Act has to be applied. Hence prays to dismiss the appeal.

11. Here it is pertinent to state that originally the claim petition filed under Section 163-A of Motor Vehicles Act 1989. But the tribunal without assigning any reason rightly framed issue under Section 166 of Motor Vehicles Act and decided the issue in favour of the petitioners. However, based on the evidence on record, the Court can consider Section 166 instead of Section 163-A of Motor Vehicles Act. In **Bhupati Prameela and others vs. Superintendent of Police, Vizianagaram and others**¹, the Division Bench of this Court held as under:

"Thus it appears that it is the duty of the Courts to do justice to the parties and while doing justice, if the technicalities come in the way, much importance need not be given to these technicalities because, ultimately, justice has to be done to the parties. Moreover, when sub-section(4) of Section 166 of the Act envisages that the Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 of the Act as an application for compensation under the Act, there is nothing wrong in treating an application filed under Section 163-A of the Act as an application under Section 166 of the Act. In view of the above and considering the object of the Act, we are of the view that the petition filed under Section 163-A of the Act can be treated as an application under Section 166 of the Act."

¹ (2011) 10 SCC 756

In view of the above Judgment of the Division Bench of this Court, the petition filed under Section 163-A of the Motor Vehicles Act can be treated as an application under Section 166 of the Motor Vehicles Act. Thus, the tribunal considering the evidence of PWs.1 and 2 coupled with the documentary evidence on record, has rightly held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

12. Coming to the quantum of compensation, according to the petitioners, the deceased was a house wife. Needless to say, being the house-wife, deceased has to perform various domestic duties including cook, caretaker etc. Thus, it can safely be culled out that she must have attained skill in managing the house. But the tribunal has taken the income of the deceased at Rs.3,000/- per month, which is very less. Hence, the income of the deceased can be taken at Rs.5,500/- per month. Thus, in light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***², the claimants are entitled to future prospects @ 25% of

² 2017 ACJ 2700

her income, since the deceased was aged above 50 years. Then it comes to Rs.6,875/- ($5,500 + 1375 = 6875$). Since the deceased left as many as two persons as the dependants, 1/3rd of her income is to be deducted towards her personal and living expenses. Then the contribution of the deceased would be Rs.4,583/- per month. Since the deceased was aged about 50 years at the time of accident, the appropriate multiplier in the light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**³ would be "13". Then the loss of dependency would be Rs.4583/- x 12 x 13 =Rs.7,14,948/-, **which can be rounded off to Rs.7,15,000/-**. In addition thereto, under the conventional heads, the claimants are granted **Rs.77,000/-** as per the decision of the Apex Court in **Pranay Sethi** (supra). Thus, in all, the compensation is awarded as follows:

| Sl.No. | Description | Amount awarded |
|--------|---|-----------------------|
| 1. | Loss of dependency (Rs.4583/- x 12 x 13 =Rs.7,14,948/-, which can be rounded off to Rs.7,15,000/-) | Rs.7,15,000-00 |
| 2. | Conventional heads | Rs. 77,000-00 |
| | Total: | Rs.7,92,000-00 |

³ 2009 ACJ 1298 (SC)

13. In the result, the M.A.C.M.A. is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,46,000/- to **Rs.7,92,000-00**. The enhanced amount shall carry interest at 6% p.a. from the date of this order till the date of realization, to be payable by the respondent Nos.1 and 2 jointly and severally. The amount of compensation shall be apportioned among the appellants-claimants in the ratio as ordered by the Tribunal. The amount shall be deposited within a period of one month from the date of receipt of a copy of this order. The claimants shall pay deficit court fee on the enhanced amount, since the initial claim is for Rs.5,00,000/-. On such payment of court fee only, the claimants are entitled to withdraw the amount. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The Chairman, Motor Accident Claims Tribunal -cum- XXV Additional Chief Judge, City Civil Court, Hyderabad. (with records)
2. One CC to Sri T. Viswarupa Chary, Advocate [OPUC]
3. One CC to Sri Kota Subba Rao, Advocate [OPUC]
4. Two CD Copies

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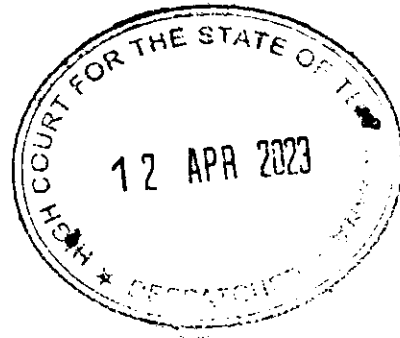
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HIGH COURT

DATED:28/09/2022

JUDGMENT

MACMA.No.449 of 2015



**ALLOWING THE MACMA
WITHOUT COSTS**

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**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY ,THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.449 of 2015

Between:

1. R.Narasimha Rao, S/o.late R.Venkateswar Rao, aged 29 years, Occ: Nill
2. R.Keerthi, W/o.Narasimha Rao, aged 23 years, Occ: Household

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Appeal Under Section 173 of Motor Vehicles Act against the Order and Decree in MVOP.No.1287 of 2012 dated 16.05.2014 on the file of the Court of the Chairman, Motor Accident Claims Tribunal –cum- XXV Additional Chief Judge, City Civil Court, Hyderabad.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the case and upon hearing the arguments of Sri T. Viswarupa Chary, Advocate for the Appellants and of Sri Kota Subba Rao, Advocate for the Respondent No.2.

This Court doth Order and Decree as follows:

1. That the Motor Accident Civil Miscellaneous Appeal be and hereby is allowed
2. That the compensation amount awarded by the Tribunal be and hereby is enhanced from Rs.4,46,000/- to Rs.7,92,000/- (Rupees seven lakhs ninety two thousand only)
3. That the enhanced amount shall carry interest at 60% p.a. from the date of this order till the date of realization, to be payable by the respondent Nos.1 & 2 jointly and severally.
4. That the amount of compensation shall be apportioned among the appellants/claimants in the ratio as ordered by the tribunal
5. That the amount shall be deposited within a period of one month from the date or receipt of a copy of this order
6. That the claimants shall pay deficit Court Fee on the enhanced amount since the initial claim is for Rs.5,00,000/-
7. That on such payment of court fee only the claimants be and hereby are entitled to withdraw the amount.
8. That save as aforesaid, the decree of the Lower Court do stands confirmed in all other respects; and
9. That there shall be no order as to costs in this Appeal.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The Chairman, Motor Accident Claims Tribunal –cum- XXV Additional Chief Judge, City Civil Court, Hyderabad.

2. Two CD Copies

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HIGH COURT

DATED:28/09/2022

DECREE

MACMA.No.449 of 2015

**ALLOWING THE MACMA
WITHOUT COSTS**

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