

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.No. 293 OF 2015

J U D G M E N T :

This appeal is filed by the appellants-claimants against the award and decree dated 17-12-2014 passed in MOP.No. 26 of 2014 by the X-Additional District and Sessions Judge, Visakhapatnam at Anakapalle, [for short, "*The Tribunal*"], awarding compensation of Rs.2,78,500/- as against the claim of Rs.10,00,000/- under various heads as mentioned in column No.25 of the claim-petition with subsequent interest and costs for the death of the deceased, Pothala Latcha Babu in a motor accident that occurred on 27-11-2012.

2. The appellants 1 to 5, who are the claimants before the Tribunal in M.O.P.No. 26 of 2014 on the file of the Court of Motor Accident Claims Tribunal-cum-X-Additional District and Sessions Judge, Visakhapatnam at Anakapalle, filed the present appeal seeking enhancement of compensation in respect of the death of the husband of the first appellant-claimant, Sri Pothala Latchababu [the deceased] in a motor accident that occurred on 27-11-2012. The claim under section 166 of the Motor Vehicles Act was made for Rs.10,00,000/- and the Tribunal has awarded a sum of Rs.2,78,500/- with interest @ 7.5% per annum from the date of petition till its realization.

3. The brief facts of the case are that the deceased, Pothala Latcha Babu, who is the husband of the first petitioner, father of petitioners 2 and 3 and son of petitioners 4 and 5 died in motor accident occurred on 27-11-2012 at Kondala Agraharam village due to rash and negligent act of driver of motor cycle bearing No. AP-31-BQ-7159 while coming on his motor cycle bearing No.AP-31-BU-5695 and the Police Makavarapalem registered a case in Crime No. 150 of 2012 for the offences punishable under section 304-A and 337 of IPC against the driver of crime vehicle and that the deceased is a coolie-cum-agriculturist and also businessman doing rice business and earning Rs.15,000/- per month and that he was 30 years old at the time of accident and that due to his sudden death in the motor vehicle accident, the petitioners, who are the legal heirs-cum-dependants suffered financially, lost love and affection and that the first respondent is the owner of crime vehicle, second respondent is the insurer of crime vehicle, therefore, they claimed Rs.10,00,000/- under various heads from the respondents 1 and 2 jointly and severally liable to pay the compensation with subsequent interest and costs.

4. Before the Tribunal, the first respondent remained ex-parte. The second respondent-Insurance Company filed its counter denying the averments made in the claim-petition and contended that the petitioners are put to strict proof of the same and that the compensation is excessive and that the petition is bad for non-joinder of owner and insurer of motor cycle driven by the

deceased as well as non-joinder of driver-rider of crime vehicle and that the petitioners have to prove that the accident was caused due to rash and negligent act of driver of crime vehicle and that the deceased used to earn Rs.15,000/- per month and that he was aged about 30 years by the date of accident and prayed to dismiss the claim-petition with costs.

5. On the basis of the above pleadings, the Tribunal framed the following issues for trial :

(i) Whether one Pothala Latcha Babu died in a motor vehicle accident occurred on 27-11-2012 due to rash and negligent driving of driver offending motor cycle bearing No. AP-31-BQ-7159 ?

(ii) Whether the petitioners 1 to 5 are entitled to compensation ? If so, to what extent and from which of the respondents ?

(iii) To what relief?

6. To substantiate the claim, the petitioners-claimants have examined PWs.1 and 2 and marked Exs.A-1 to A-4 on their behalf. On behalf of second respondent-Shriram General Insurance Company Limited, no oral and documentary evidence is adduced on its behalf.

7. The case of the appellants-claimants is that the deceased was a earning member and was a helping hand to their family and was earning Rs.15,000/- per month by way of agriculture coolie and conducting business in rice trading. According to the evidence of PW-2, the deceased died in the motor accident and though initially in the chief examination PW-2 has supported the evidence

of PW-1 with regard to the income of the deceased at Rs. 15,000/- but whereas in the cross-examination PW-2 has deposed that he is not having any knowledge about the business and income of the deceased and he only came to know the same through the villagers. Be that as it may, this Court finds that there is no proof of income of the deceased and in the absence of income certificate of the deceased, the Claims Tribunal has determined and computed the notional income of Rs.3,000=00 per month though he was aged about 30 years as on the date of accident. The Claims Tribunal has taken into consideration the formula of age factor between 31 to 35 years and applied the multiplier '16' but whereas the deceased was aged 30 years and the appropriate multiplier for the age of 30 years is '17', which has to be applied in this case.

8. Sri Kota Subba Rao, the learned standing counsel for the second respondent contended that the Claims Tribunal has fixed very less income of the deceased, albeit the appellants-claimants are dependents on the income of the deceased and the deceased was maintaining the family and attending to their needs would have definitely earned more than Rs.3000/- per month.

9. Accordingly, the notional income of the deceased is fixed at Rs.4,000/- per month and with regard to future prospectus, Sri Kota Subba Rao, the learned standing counsel for the second respondent has relied upon the judgment in **NATIONAL INSURANCE COMPANY V/s. PRANAY SETHI** ¹. In the said judgment,

¹) 2017 ACJ-2700 = 2017 S.C.C. (6) 170

the Hon’ble Apex Court has considered the future prospectus and accordingly 30% future prospectus is taken into consideration and multiplier ‘17’ is applied as the deceased was a married person, the appellants-claimants are entitled to Rs.70,000=00 under different heads as conventional charges. Now the compensation is computed as follows :

- a) monthly income of the deceased is fixed at Rs.4,000/- and after deducting 1/4th towards personal expenses, the monthly contribution to the family is at Rs.3,000/- and annual contribution comes to Rs.3000 x 12 = Rs.36,000/-

b) the age of the deceased at the time of accidental death was 30 years and the appropriate multiplier is 17 and the loss of contribution to the family of the deceased can be calculated by multiplying the annual contribution of Rs.36,000/- x the appropriate multiplier ‘17’. Rs.36,000 x 17 = Rs.6,12,000/- .. Rs. 6,12,000=00

c) under different heads as conventional charges

.. Rs. 70,000=00

TotalRs.6,82,000=00

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10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal is enhanced from Rs.2,78,500/- to Rs.6,82,000=00 with subsequent interest @ 7.5% per annum from the date of filing the claim-petition till its realization. Respondent No.2-Shriram General Insurance Company Limited, Visakhapatnam, represented by its Branch Manager, Dondaparthy Road, Visakhapatnam is directed to deposit the enhanced amount of compensation together with accrued interest thereon positively within two months from the

date of receipt of a copy of this judgment. On such deposit, the appellants 1, 4 and 5 are entitled to withdraw the amount as per the award and decree passed by the Claims Tribunal, apportioning the share amount of compensation among the appellants-claimants, and the share amount of the appellants 2 and 3, who are minor claimants 2 and 3, represented by their natural mother and guardian i.e., appellant No.1/claimant No.1 shall continued to be kept in fixed deposit till they attain majority. No costs.

11. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.

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[R E S U L T : APPEAL IS PARTY ALLOWED]

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