THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.783 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 17.08.2005 passed in O.P.No.1050 of 2004 by the IV Additional Chief Judge-cum-MACT-CCC-Hyderabad (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is the wife, petitioners 2 & 3 are the children and the 4th petitioner is the mother of the deceased-B.Bakkaiah. On 16.09.1996 at about 12.00 noon while tractor-trailer bearing No.AP 26T 1067 and 1068 was proceeding with labourers from Gowlidoddi to Patancheru, on the way due to rash and negligent driving of the tractor, it turned turtle at Gopanpally Thanda, due to which the deceased and other labourers sustained grievous injuries. Immediately they were shifted to Hospital and while shifting to hospital, the deceased died. The deceased was hale and healthy and earning Rs.3,000/- per month at the time of the accident. Due to the death of the deceased, the petitioners lost the bread-earner of the family. The accident occurred only due to the rash and negligent driving of the driver of the tractor. Hence, the petitioners filed the claim petition

claiming compensation of Rs.3,40,000/-, payable by both the respondents, who are owner and insurer of the offending tractor.

4. Before the Tribunal, the 1st respondent remained *ex parte.* The 2nd respondent/insurance company filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and awarded total compensation of Rs.1,85,900/- i.e., Rs.1,66,400/- towards loss of income, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards funeral expenses, with interest @ 9% per annum from the date of petition till the date of realization, payable by the 1st respondent only and the claim against the 2nd respondent/insurance company is dismissed. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. On 28.10.2019 when the matter is called, there was no representation for the 2nd respondent-Oriental Insurance Company Ltd., Hyderabad, and the same was adjourned to today. Today also, when the matter is called, there is no representation for the 2nd respondent/insurance company. Since this matter pertains to

the year 2006 and the accident has taken place on 16.09.1996, dodging the matter on one pretext or the other is of no purpose. Hence, the matter is decided on the strength of the evidence and material available on record and after hearing Sri C.Buchi Reddy, learned counsel appearing for the appellants. Perused the material record.

7. Sri C.Buchi Reddy, learned counsel for the appellants, submitted that the Tribunal had erred in granting the compensation. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi[1].** He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[2]**, the appellants 2 & 3, who are minor children of the deceased, are entitled to Rs.50,000/- each under the head of loss of love and affection. Learned counsel further submitted that the 4th appellant-Boddupally Pullamma, mother of the deceased, died during the pendency of the appeal and her share may be divided amongst the appellants 1 to 3. Learned counsel further submitted that the Tribunal has only fastened the liability on the 1st respondent/owner of the tractor and dismissed the claim petition against the 2nd respondent/insurance

[1] 2017(6) ALD 170 (SC)
[2] 2018 LawSuit (SC) 904

company, but the offending vehicle is covered under Ex.B-1 policy and the accident has taken place during the subsistence of the policy and hence, the liability should also be fastened on the 2nd respondent/insurance company.

8. In view of the settled law laid down by the Apex Court on different issues in several decisions, the entire compensation needs to be re-determined. In the evidence, the appellants/claimants stated that the deceased was aged about 24 years and earning Rs.3,000/- per month, but since there is no income proof, a notional income of Rs.3,000/- can be taken as monthly income of the deceased. In Ex.A-4-Post Mortem Report, the age of the deceased is shown as 35 years. Therefore, this Court is inclined to consider the age of the deceased as 35 years. Apart from the same, the appellants are entitled to addition of 40% towards future prospects since the deceased was an agricultural labourer, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/- (40%)), and after deduction of 1/4th towards personal expenses of the deceased since there are four family members, the net monthly income of the deceased comes to Rs.3,150/- (Rs.4,200/- - Rs.1,050/- (1/4th)). Therefore, the annual income of the deceased comes to Rs.37,800/- (Rs.3,150/- X 12 months). Since the age of the deceased was 35 years at the time of the accident, the multiplier for the age of the deceased is '16' as per

the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[3]. Hence, the compensation under the head 'loss of income' comes to Rs.6,04,800/- (Rs.37,800/- X 16). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru Ram**'s case (supra), a sum of Rs.50,000/- each is granted to appellants 2 & 3, who are minor children of the deceased, under the head of loss of love and affection. Therefore, the total compensation comes to Rs.7,74,800/- (Rs.6,04,800/- + Rs.70,000/- + Rs.1,00,000/-).

9. Insofar as the fastening of liability on the 2nd respondent/insurance company is concerned, in the schedule of premium column in Ex.B-1-insurance policy, it is shown as 'Liability to Public-Basic = Rs.1,245/-, ADD, Loading for Trailer = Rs.199.50'. In view of the above, this Court feels that it would be just and appropriate to fasten the liability on the 2nd respondent/insurance company also since the crime vehicle is covered under valid policy and the accident has taken place during the subsistence of the policy.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,85,900/- to Rs.7,74,800/- payable by both the respondents jointly and severally. The enhanced amount shall

[3] (2009) 6 SCC 121

carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.3,40,000/-, they are directed to deposit deficit Court fee before the Tribunal. Since the 4th appellant/4th claimant, who is the mother of the deceased, died during the pendency of the appeal, her share shall be divided amongst appellants 1 to 3/claimants 1 to 3. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants 1 to 3/claimants 1 to 3 are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 29th October, 2019

KL