

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.284 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 31.08.2007 passed in O.P.No.1422 of 2006 by the VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, the Court below).

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

3. The brief facts of the case are that the 1st petitioner is wife, 2nd petitioner is son, 3rd petitioner is the daughter and 4th petitioner is the mother of the deceased-G.Eashwarappa. On 08.12.2005 at about 11.00 p.m., while the deceased was proceeding on his HeroHonda motorcycle from Ghatkeshwar side towards Yadagirigutta, when he reached near HPCL main gate hotel, the bus belonging to 1st respondent came in opposite direction in a rash and negligent manner at high speed and ran over the deceased and as a result of which, he fell down under the front tyre of the bus and died on the spot and the dead body was shifted to Gandhi Hospital. The deceased was aged 40 years and working as police constable in S.R. Nagar Police Station and drawing salary of Rs.11,866/- per month at the time of the accident. Hence, the petitioners filed the claim

petition claiming compensation of Rs.15,00,000/-, payable by both the respondents, being the owner and insurer of the offending bus.

4. Before the Court below, respondent No.1 remained *ex parte*. Respondent No.2 filed its 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 evidence of P.Ws.1 to 3 and the documentary evidence of Exs.A-1 to A-7 & Exs.X-1 to X-3, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending bus and awarded total compensation of Rs.8,01,620/- i.e., Rs.7,66,620/- towards loss of income, Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard Sri Chandrasekhar Reddy Gopi Reddy, learned counsel for the appellants and Smt. P.Satya Manjula, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Sri Chandrasekhar Reddy Gopi Reddy, learned counsel for the appellants, submitted that though P.W.3 produced Ex.X-2-Service Register of the deceased to show that the deceased was earning Rs.11,866/- per month by working as police constable at the time of the accident, the Court below erroneously disbelieved the same and fixed the income of the deceased at Rs.6,388/- per month, which is very low. He further submitted that the appellants are also entitled to addition of 30% 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, appellant No.3, being the minor daughter of the deceased, is entitled to Rs.50,000/- towards loss of love and affection and appellant No.4, being the mother of the deceased, is entitled to Rs.40,000/- under the head of loss of filial consortium. He further submitted that during the pendency of the appeal, the 4th appellant died and the share of the 4th appellant can be shared between appellants 1 to 3.

8. Sri Chandrasekhar Reddy Gopi Reddy, learned counsel for the appellants, also relied on a decision reported in **Manasvi Jain v. Delhi Transport Corporation**³, wherein it is held that

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

³ LAWS (SC) 2014 (4) 68

while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, Life Insurance Premium, repayment of loans, etc., should not be excluded from the income.

9. Smt Satya Manjula, learned standing counsel appearing for respondent No.2/insurance company, submitted that the Court below passed a well reasoned order and sought to dismiss the appeal.

10. Admittedly, as per the evidence of P.W.3-B.Mohan Rao, Office Superintendent in the office of the Police Commissioner Office, Hyderabad, who was summoned to bring the S.R. of the deceased and he produced Ex.X-2-Service Register of the deceased, wherein it is stated that the deceased was drawing salary of Rs.11,866/- per month by the time of the accident. Therefore, this Court is also inclined to consider the same. Apart from the same, since the deceased worked as a police constable and aged about 45 years as on the date of the accident, the appellants are entitled to addition of 30% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.15,426/- (Rs.11,866/- + Rs.3,560/- (30%)), and after deduction of 1/4th towards personal deductions of the deceased since there are four family members of the deceased, the monthly income of the deceased would come Rs.11,569/- (Rs.15,426/- - Rs.3,857/- (1/4)). Therefore,

the annual income of the deceased comes to Rs.1,38,828/- (Rs.11,569/- X 12 months). The multiplier for the age of the deceased is '14'. Hence, the compensation under the head of 'loss of income' comes to Rs.19,43,592/- (Rs.1,38,828/- X 14). 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/- is granted to appellant No.3, who is the minor daughter of the deceased, and a sum of Rs.40,000/- is granted to appellant No.4, who is the mother of the deceased. Therefore, the total compensation comes to Rs.21,03,592/- (Rs.19,43,592/- + Rs.70,000/- + Rs.50,000/- + Rs.40,000/-). Since the 4th appellant died during the pendency of the appeal, the share of the 4th appellant shall be shared among the appellants 1 to 3.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Court below from Rs.8,01,620/- to Rs.21,03,592/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.15,00,000/-, they are directed to deposit deficit Court fee before the Court below. 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 are permitted to withdraw their respective shares as awarded by the Court below, subject to payment of deficit court fee. It is made clear that since the 4th appellant died during the pendency of the appeal, the share of the 4th appellant shall be shared among the appellants 1 to 3. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 30th October, 2019

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