THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2007 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 11.07.2006 passed in O.P.No.47 of 2004 by the Motor Accident Claims Tribunal-cum-I Additional District Judge at Adilabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant No.2 is the daughter and appellant Nos.3 and 4 are the parents of the deceased, Sarwar. On 09.10.1996 at about 1.00 pm., while the deceased, along with his friend, was proceeding on a scooter to vegetable market from his house, and when they reached near Police Control Room, Mandamarri, one LML Vespa bearing No.AP1A 4608 came in a rash and negligent manner with high speed and dashed the scooter of the deceased from its back side, due to which, the deceased fell down and received head injury. Immediately, he was shifted to KK-1 Dispensary, Mandamarri and after first aid, he was referred to Area Hospital. From there, while he was shifting to Hyderabad for better treatment, on the way, he succumbed to injuries. The claimants filed aforesaid OP claiming compensation of Rs.10,00,000/- against respondent Nos.1 and 2, owner and insurer of the LML Vespa, for the death of the deceased.

3. Before the Tribunal, respondent No.1 remained *ex parte.* Respondent No.2 filed counter denying the averments of the claim

petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. 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 rider of the LML Vespa and awarded total compensation of Rs.4,42,000/- with interest @ 7% per annum under various heads. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri S.Surender Reddy, learned counsel for the appellants, submitted that though the appellants produced bunch of pay slips from October, 1995 to September, 1996 under Ex.A9 to show that the deceased was earning average income of Rs.6,758/- per month, by working as Electrician in Singareni Collieries Company Limited, the Tribunal erroneously fixed the income of the deceased at Rs.3,000/- per month and the same is very low. He further submitted that as per Ex.A.3, post-mortem report, the age of the deceased is 25 and the appropriate multiplier for calculation of compensation is '18' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**[1]. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court

[1] 2009(6) SCC 121

in **National Insurance Co. Ltd. Vs. Pranay Sethi**[2]**.** He further submitted that appellant No.2, being the minor daughter of the deceased, is entitled to Rs.50,000/- towards loss of parental consortium, and respondent Nos.3 and 4 being the parents of the deceased are entitled to Rs.40,000/- each towards loss of filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**[3].

6. Sri Ravi Sankar Jandhyala, learned counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and there are no grounds to interfere with the same and prayed to dismiss the appeal.

7. A perusal of the record reveals that the deceased was working as Electrician in Singareni Collieries Company Limited and was drawing salary in the range of Rs.5,000/- to Rs.8,000/- per month depending upon the working days, but the Tribunal has arrived the income of the deceased at Rs.3,000/- per month, which is very low. The appellants filed bunch of pay slips from October, 1995 to September, 1996 under Ex.A.9 to show that the deceased was earning average monthly income of Rs.6,758/-, which, this Court is inclined to take into consideration as income of the deceased. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.9,461/-

[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904

(Rs.6,758/- + Rs.2,703/-), and after deduction of 1/4th, as the dependants are four in number, the annual income comes to Rs.85,152/- (Rs.7,096/- X 12). As the deceased was aged 25 years as per Ex.A.3 postmortem report, the appropriate multiplier is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.15,32,736/- (Rs.85,152/- X 18). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). As appellant No.2 is minor daughter, she is entitled to Rs.50,000/- towards parental consortium and respondent Nos.3 and 4, being the parents, are entitled to Rs,80,000/- (Rs.40,000/- each) as per **Nanu Ram Alias Chuhru Ram**'s case (supra). Therefore, the total compensation comes to Rs.17,32,736/- (Rs.15,32,736/- + Rs.70,000/- + Rs.50,000/- + Rs.80,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.4,42,000/- to Rs.17,32,736/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.10,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 28.10.2019
TJMR