

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3671 of 2011

JUDGMENT:

The appellants-claimants filed this appeal against the order and decree dated 11.09.2009 passed in O.P.No.2097 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad (for short 'the Tribunal').

2. The brief facts of the case are that on 17.02.2007 at about 5.30 PM, while the deceased Khaja Kaleemuddin was proceeding by walk in front of Shaheen Hotel, Chandrayangutta, a lorry bearing No.AP 21 T 9999 driven by its driver in a rash and negligent manner and dashed against the deceased resulting multiple injuries all over his body. Immediately, he was shifted to Owaisi Hospital and from there to Yashoda Hospital, Hyderabad, where he succumbed to injuries while undergoing treatment. The Police, Chandrayangutta, registered a case in Cr.No.56 of 2007 initially under Section 337 IPC and later altered to Section 304-A IPC. The petitioners being parents and brothers of the deceased filed aforesaid O.P., claiming compensation of Rs.6,50,000/- for the death of the deceased.

3. The 1st respondent-owner of crime vehicle remained *ex parte*. The 2nd respondent-Insurer filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the petitioners is highly excessive and exorbitant and sought to dismiss the petition.

4. During the course of trial, the petitioners examined P.Ws.1 to 5 and got marked Exs.A1 to A7. On behalf of the respondents, no oral or documentary evidence was adduced. Ex.X1 was also marked.

5. After considering the material on record and the evidence adduced by the parties, the Tribunal allowed the O.P., in part awarding compensation of Rs.2,75,000/- with interest at 7.5% p.a. from the date of petition till the date of realization payable by respondents 1 and 2 jointly and severally. Aggrieved by the said quantum of compensation, the petitioners preferred the present appeal.

6. Heard.

7. A perusal of the order impugned would disclose that the Court below, while granting compensation towards loss of income, took the notional income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd towards his personal expenses and by applying the multiplier '11', awarded compensation of Rs.1,10,000/- towards loss of dependency. In addition to it, the Tribunal awarded Rs.2,500/- towards funeral expenses; Rs.2,500/-towards loss of estate; Rs.10,000/- towards transport, attendant and extra-nourishment charges and Rs.1,50,000/- towards treatment and medical expenses, in total, the compensation of Rs.2,75,000/- was awarded to the petitioners as against the claim of Rs.6,50,000/-.

8. Insofar as loss of dependency is concerned, as it is stated that the deceased was aged about 19 years at the time of accident and was earning a sum of Rs.5,000/- per month by running STD booth, it would be appropriate to assess his monthly income at Rs.3,000/- as no document was produced before the Court. Since the Tribunal did not grant any amount towards future prospects, this Court is inclined to award 40% towards future prospects, as per the decision of the Apex Court in **National Insurance Company Limited v Pranay Sethi**¹. Thus, the monthly income of the deceased would come to Rs.4,200/- (Rs.3,000+1,200/- (40% future prospects)). However, as the claimants are five in number, 1/4th of his income should be deducted towards his personal expenses and the contribution to his family members would come to Rs.3,150/- and annually it comes to Rs.37,800/-. Since the deceased was aged about 19 years at the time of the accident, the appropriate multiplier, as per the decision of the Apex Court in **Sarla Verma v Delhi Transport Corporation**², is '18'. Hence, the compensation towards loss of dependency comes to Rs.37,800 x18 =6,80,400/-. Further, in the light of the judgment of the Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**³, claimant Nos.1 and 2 being parents of the deceased, are entitled to Rs.40,000/- each, towards loss of love and affection. Thus, the total compensation would come to Rs.6,80,400 +80,000=7,60,400/- and the same is awarded to the claimants.

¹ AIR 2017 SC 5157

² 2009(6) SCC 121

³ 2018 LawSuit (SC) 904

9. In the result, the appeal is allowed, by enhancing the compensation amount awarded by the Tribunal from Rs.2,75,000/- to Rs.7,60,400/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of this appeal to its realization and that as the claim is Rs.6,50,000/-, the claimants shall pay the deficit Court fee before the Tribunal. Miscellaneous petitions, if any pending in this appeal, shall stand closed. No order as to costs.

11th July, 2019

sj

T.AMARNATH GOUD, J

