

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2430 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Award and Decree dated 31-07-2006 passed in O.P.No.477 of 2005 by the Motor Vehicle Accident Claims Tribunal-cum- II Additional District Judge, Warangal (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant No.2 is the minor daughter, appellant No.3 is the father and appellant No.4 is the mother of the deceased, Syed Akthar. On 30.01.2005 at about 7.00 P.M., while the deceased was riding Suzuki motorcycle bearing No.AP10J/3885 on the extreme left side of the road, a lorry was coming from Warangal towards Khammam, as such, he slowed down his vehicle and also applied the dipper, but due to the focus of the head lights of the lorry, which is coming in the opposite direction, he could not observe the stationed lorry bearing No.AP7T 1248 parked on the road without parking lights, signals or indications and hit the rear side of the stationed lorry. In the said accident, he sustained severe head injury and fell down along with the pillion rider and died while shifting to the hospital. The claimants filed the above M.V.O.P., claiming compensation of Rs.10,00,000/- on account of death of the deceased.

3. Before the Tribunal, Respondent No.1-owner of the lorry, remained *ex parte*. Respondent No.3-insurance company, filed its counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the

claimants is excessive, exorbitant, imaginary and out of proportion and therefore, sought to dismiss the petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the wrong parking of the lorry by its driver, and awarded a total compensation of Rs.3,01,128/- with interest @ 6% per annum. Dissatisfied with the Award passed by the Tribunal, the appellants filed the present appeal, seeking enhancement of the compensation.

5. Smt.Lavanya, representing Sri Nandigama Krishna Rao, learned counsel appearing for the appellants, submitted that the Tribunal has granted meager amount of Rs.3,01,128/- against the claim of Rs.10,00,000/- towards compensation, which needs to be enhanced. She further submitted that the deceased was working as electrician and earning Rs.6,000/- per month. She further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹. She further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. V. Nanu Ram Alias Chuhru Ram & Others**², appellant No.2 is entitled to Rs.50,000/- and appellant Nos.3 and 4 are entitled to Rs.40,000/- each under the head loss of filial consortium.

¹ 2017(6) ALD 170 (SC)

² 2018 Law Suit (SC) 904

6. Sri P.Harinath Gupta, learned counsel appearing for respondent No.3, submitted that the Tribunal rightly fixed the income of the deceased at Rs.2,000/- per month. He further submitted that in the absence of filing any wages register or employment records, the evidence of P.W.3 that the deceased was drawing Rs.6,000/- per month is not trustworthy. He further submitted that there are no grounds to interfere with the Award passed by the Tribunal and sought to dismiss the appeal.

7. Admittedly, the accident is not denied and fastening of liability is also not in dispute. Insofar as determination of compensation is concerned, P.W.3-the employer of the deceased, deposed that he issued Ex.A6, salary certificate, showing that the deceased was drawing salary of Rs.6,000/- per month. No doubt P.W.3 categorically deposed that now he is paying Rs.2,000/- per month to the co-workers for the same work done by the deceased, but it is not the evidence of P.W.3 that he paid only Rs.2,000/- to the deceased at the time of his death. Apart from the same, when there is no specific denial of his paying Rs.6,000/- per month to the deceased, Ex.A6 salary certificate cannot be ignored. Hence, this Court is inclined to take the salary of the deceased at Rs.6,000/- per month.

8. Insofar as the age of the deceased is concerned, the Tribunal has considered the age of the deceased as 35 years basing on Ex.A4, postmortem report, and applied the multiplier '16', which are correct. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the

Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, the monthly income of the deceased comes to Rs.8,400/- (Rs.6,000 + 40% future prospects Rs.2,400/-) and after deducting 1/4th of the income for his personal expenses, the loss of dependency comes to Rs.12,09,600/- (6,300/- x 12 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's** case (supra), the appellant No.2, being the minor daughter of the deceased is entitled to Rs.50,000/- towards loss of parental consortium and appellant Nos.3 and 4 being the parents of the deceased, are entitled to Rs.80,000/- (Rs.40,000/- each) towards loss of filial consortium. Therefore, the total compensation comes to Rs.14,09,600/- (Rs.12,09,600/- + Rs.70,000/- + Rs.50,000/- + Rs.80,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.3,01,128/- to Rs.15,09,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The appellants are directed to pay the deficit Court fee on over and above the amount claimed by them. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 06.11.2019.

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