THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2048 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Judgment and Decree dated 09.01.2006 passed in O.P.No.795 of 2001 by the Motor Accident Claims Tribunal {II Additional District Judge (Fast Track Court)}, Nizamabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant No.2 is the son and appellant No.3 is the daughter of the deceased, K.Buchaiah. On 09.02.2001, while the deceased was proceeding by walk towards Kasamnagar Village, and when he reached near Convent School in Kasamnagar Village, an auto bearing No.AP25T 7716 came in a rash and negligent manner and dashed the deceased. In the said accident, the deceased sustained grievous injuries and he was shifted to Mamatha Nursing Home, Mupkal, and while he was undergoing treatment, succumbed to injuries on 24.02.2001. The claimants filed aforesaid OP claiming compensation of Rs.3,00,000/- against respondent Nos.1 and 2, owner and insurer of the auto, 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 driver of the auto and awarded total compensation of Rs.2,00,000/- with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri K.M.Mahender Reddy, learned counsel for the appellants, submitted that though the appellants produced the evidence to show that the deceased was earning Rs.7,000/- per month by doing Beedi Packing work and conducting milk supply and tent house business, the Tribunal erroneously fixed the income of the deceased at Rs.2,200/- per month and the same is very low. He further submitted that the appellants are also entitled to addition of 25% 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 in **National Insurance Co. Ltd. Vs. Pranay Sethi[1].**

6. Sri Srinivasa Rao Vutla, learned counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. Though no proof of income of the deceased was filed, basing on the evidence of P.W.2, the Tribunal fixed the income of the

[1] 2017(6) ALD 170 (SC)

deceased at Rs.2,200/- per month. It is to be noted that P.Ws.1 and 3, in their evidence, stated that the deceased was working in the Beedi factor and running tent house and was earning Rs.10,000/- to Rs.15,000/- per month. In the circumstances of the case, this Court is inclined to fix the income of the deceased at Rs.3,000/- per month. Apart from the same, the appellants are entitled to addition of 25% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.3,750/- (Rs.3,000/- + Rs.750/-), and after deduction of 1/3rd, the annual income comes to Rs.30,000/- (Rs.2,500/- X 12). As the deceased was aged 48 years, the appropriate multiplier is '13'. Hence, the compensation under the head 'loss of dependency' comes to Rs.3,90,000/- (Rs.30,000/- X 13). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). Therefore, the total compensation comes to Rs.4,60,000/- (Rs.3,90,000/- + Rs.70,000/-).

8. It is to be seen that though appellant No.3 is the married daughter, the Tribunal, without noticing the same, apportioned the compensation amount to her also. As appellant No.3 is the married daughter, she is not entitled to compensation and appellant Nos.1 and 2 alone are entitled to receive the compensation. Therefore, the finding of the Tribunal in that regard is modified.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.2,00,000/- to Rs.4,60,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.3,00,000/-, 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: 29.10.2019
TJMR