

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1141 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 24.02.2006 passed in O.P.No.566 of 2002 by the Motor Accidents Claims Tribunal (I Additional District Judge) at Mahabubnagar (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife and appellant Nos.2 to 4 are the children of the deceased, Chevvula Pothanna @ Pothaiah @ Pottanna. On 20.10.2001 at about 7.15 pm., while the deceased, along with his wife, was going to school, in which he was working, on Mannanoor to Amrabad Road, and when they reached near the school, an auto bearing No.AP11V 7926 came in a rash and negligent manner with high speed and dashed the deceased, as a result of which, the deceased sustained grievous injuries to his head. Immediately, he was shifted to Osmania General Hospital, Hyderabad, but he succumbed to injuries on 25.10.2001 while undergoing treatment. The claimants filed aforesaid OP claiming compensation of Rs.6,00,000/- 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 a 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 there is 50% contributory negligence on the part of the deceased in causing the accident and awarded compensation of Rs.2,30,000/- 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 Vishnu Vardhan Reddy, learned counsel for the appellants, submitted that the finding of the Tribunal to the extent of assessing the contributory negligence against the deceased is erroneous and bad in law, as the trial Court reached to such conclusion only an assumption and presumption and without there being any strong basis. He further submitted that the appellants are also entitled to addition of 15% 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. He further submitted that appellant Nos.2 to 4, being the minor children of the deceased, are entitled to Rs.50,000/- each towards loss of parental consortium, as per the decision of the Hon'ble

¹ 2017(6) ALD 170 (SC)

Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**².

6. Sri Nisaruddin Ahmed Jeddy, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. On perusing the record, this Court feels that there is no contributory negligence on the part of the deceased. To prove that aspect, respondent No.2 did not let in any evidence and the Tribunal came to such conclusion only on assumption and presumption without there being any strong basis. Therefore, the finding of the Tribunal in this regard is set aside.

8. Coming to compensation, the deceased was working as Cook in A.P. Tribunal Welfare Residential School (PTG Boys), Mannanoor and was drawing a salary of Rs.3,885/- per month. The appellants also filed Ex.A.8-salary certificate to prove the same, and hence, the said amount can be taken into consideration for calculating the compensation. Apart from the same, the appellants are entitled to addition of 30% on the income of the deceased towards future prospects, as per **Pranay Sethi's** case (supra). Therefore, monthly income of the deceased comes to Rs.5,051/- (Rs.3,885/- + Rs.1,166/-), and after deduction of 1/4th, as the dependants are four in number, the annual income comes to Rs.45,456/-

² 2018 Law Suit (SC) 904

(Rs.3788/- X 12). As the deceased was aged about 50 years as per Ex.A.4-post-mortem report, the appropriate multiplier is '13'. Hence, the compensation under the head 'loss of dependency' comes to Rs.5,90,928/- (Rs.45,456/- X 13). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi's** case (supra). Appellant Nos.2 to 5, being the minor children of the deceased, are entitled to Rs.1,50,000/- (Rs.50,000/- each) towards parental consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.8,10,928/- (Rs.5,90,928/- + Rs.70,000/- + Rs.1,50,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.2,30,000/- to Rs.8,10,928/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.6,00,000/-, 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: 23.09.2019
TJMR