THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1498 OF 2010

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 21.06.2010 passed in O.P.No.2856 of 2008 by the Motor Vehicle Accidents Claims Tribunal-cum-X Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that appellants are the parents of the deceased, Samanthu Sachin. On 01.11.2008 at about 6.30 P.M., the deceased was going on National High Way No.7 at the village out skirts of Kalakal, Medak District and when he reached Janata Mess, a lorry bearing No.AP31TT 9711, driven by its driver rashly and negligently and at high speed and which was going from Nizamabad to Hyderabad, hit the deceased. Due to which, the deceased received fatal injuries and died. The claimants filed aforesaid OP claiming compensation of Rs.5,00,000/- against respondent Nos.1 and 2, the owner and the insurer of aforesaid lorry, for the death of the deceased.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its 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 lorry and awarded total compensation of Rs.2,50,000/-, with interest @ 12% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri Kasireddy Jagathpal Reddy, learned counsel for the appellants, submitted that though the appellants produced the evidence to the effect that the deceased was earning Rs.6,000/- per month by doing milk business, the Tribunal fixed the notional income of the deceased at Rs.15,000/- per annum, which needs to be enhanced. He further submitted that apart from the same, the Tribunal wrongly taken the multiplier of 15 instead of 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 Rs.30,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[2]**.** He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**[3],

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[1] 2009 (6) SCC 1211
[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904

appellants being the parents of the deceased, are entitled to Rs.40,000/- each under the head of love and affection.

6. Sri Narsi Reddy Teegala, learned counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. As the appellants failed to file any evidence to prove that the deceased was earning Rs.6,000/- per month, the Tribunal notionally fixed the income of the deceased at Rs.15,000/- per annum, but the same is meager. In the facts and circumstances of the case, this Court is inclined to fix the notional income of the deceased as Rs.30,000/- per annum.

8. Learned counsel for the appellants though argued that in case of fixing notional income, in the absence of proof of income, personal expenses need not be deducted; he could not place any decision in support of his argument. In almost all the cases wherein the Hon'ble Supreme Court fixed notional income of the deceased, it has deducted personal expenses. In the recent judgment in **Magma General Insurance Co. Ltd. Vs. Nanu Ram** (supra), the Hon'ble Supreme Court made deduction towards personal expenditure while upholding the notional income. Therefore, the above contention of the learned counsel for the appellants is rejected.

9. Since the deceased is unmarried, 50% of his income should be deducted towards personal expenditure as decided by the Apex Court in **Smt. Sarla Varma** (Supra). The Tribunal has wrongly adopted the multiplier of '15' instead of '18' as the deceased was aged about 19 years at the time of accident. 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, annual income of the deceased comes to Rs.42,000/- (Rs.30,000 + Rs.12,000/- future prospects). After deducting 50% towards personal expenses, the income of the deceased comes to Rs.21,000/- per annum. The multiplier for the age of the deceased is '18'. Hence, the compensation under the head 'loss of income' comes to Rs.3,78,000/- (Rs.21,000/- X 18). The appellants are also entitled to Rs.30,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram**'s case (supra), a sum of Rs.80,000/- (Rs.40,000/- X 2) is granted to the appellants towards loss of filial. The amount of Rs.10,000/- granted by the Tribunal towards transportation charges is confirmed. Therefore, the total compensation comes to Rs.4,98,000/- (Rs.3,78,000/- + Rs.30,000/- + Rs.80,000/- + Rs.10,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,50,000/- to Rs.4,98,000/-. The enhanced

amount shall carry interest @ 7.5% per annum from the date of petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 10.07.2019
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