THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.2363 OF 2006 & 1896 OF 2008

COMMON JUDGMENT:

Since both the appeals arise out of an order dated 13.07.2016 in O.P.No.2156 of 2003, on the file of the Motor Accidents Claims Tribunal-cum-I Additional Metropolitan Sessions Judge, Hyderabad (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.2363 OF 2006:

2. This appeal is filed by the appellants/claimants on the ground that the Tribunal awarded meager compensation of Rs.8,55,240/- against the claim of Rs.15,00,000/- for the death of G.Damodar Reddy.

M.A.C.M.A.No.1896 OF 2008:

3. This appeal is filed by the appellant/insurance company, on the ground that the compensation awarded by the Tribunal is excessive.

4. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.2363 of 2006.

5. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 and 3 are the children and appellant No.4 is the father of the deceased, G.Damodar Reddy. On 23.07.2003, while the deceased was proceeding from Miyapur to Kukatpally on his motorcycle, and when he reached Nizampet X Road, one trolley

good carriage vehicle bearing No.AP315 7527 came in a rash and negligent manner and dashed the motorcycle of the deceased, as a result of which, the deceased sustained fracture and crush injuries all over his body. Immediately, he was shifted to Apollo Hospital, where he succumbed to injuries while undergoing treatment. The appellants filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of the aforesaid crime vehicle, respectively, claiming compensation of Rs.15,00,000/- for the death of the deceased.

6. Sri B.Mahender Reddy, learned counsel for the appellants, submitted that the deceased, apart from working as Upper Division Clerk in Provident Fund Organization, Regional Office, Hyderabad, used to supervise his agricultural lands periodically and getting income from them. To prove the same, the appellants filed Exs.13 and 14, but the Tribunal did not consider the same and he seeks to consider agricultural income of the deceased. He further submitted that the age of the deceased was 46 years at the time of accident and the appropriate multiplier for calculation of compensation is '13' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**[1], but the Tribunal wrongly adopted the multiplier '10'. He further submitted that the appellants are also entitled to addition of 30% 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.**

[1] 2009(6) SCC 121

Ltd. Vs. Pranay Sethi[2]**.** He further submitted that appellant No.4, being the father of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**[3].

7. Sri A.Veeraswamy, learned Standing Counsel for respondent No.2-insurance company, submitted that the Tribunal erroneously did not deduct the amount that was being deducted towards Professional Tax from the salary of the deceased and sought to reduce the compensation amount.

8. Though the appellants filed Exs.13 and 14-certified copies of pahanis of land belongs to the deceased, to show that the deceased was getting income from his agricultural land, the Tribunal did not deal with the same, except mentioning the same in its Order. However, as no proper evidence was led by the appellants to prove the agricultural income of the deceased, this Court is not inclined to take into consideration the agricultural income of the deceased.

9. Coming to the salary of the deceased, the Tribunal took the gross salary of the deceased while calculating the compensation amount without deducting any statutory amounts. As per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. V. Indira Srivastave**[4]**,** Income Tax and Professional Tax are to be deducted from the gross salary of an employee. As per

[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904
[4] 2008 ACJ 614

Ex.A.8, the gross salary of the deceased was Rs.10,251/- and an amount of Rs.80/- was being deducted towards Professional Tax. Therefore, the monthly salary to be taken into consideration comes to Rs.10,171/- (Rs.10,251/- (-) Rs.80/-). Apart from the same, the appellants are entitled to addition of 30% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.13,222/- (Rs.10,171/- + Rs.3,051/-), and after deduction of 1/4th towards personal expenditure, as there are four dependants, the annual income comes to Rs.1,19,004/- (Rs.9,917/- X 12). As the deceased was aged 46 years, the appropriate multiplier is '13'. Hence, the compensation under the head 'loss of dependency' comes to Rs.15,47,052/- (Rs.1,19,004/- 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 No.4, being the father of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium, as per **Nanu Ram Alias Chuhru Ram**'s case (supra). Apart from the same, the appellants are entitled to the sum of Rs.79,896/- covered under Ex.A.10, medical bills, issued by Apollo Hospital. Therefore, the total compensation comes to Rs.17,36,948/- (Rs.15,47,052/- + Rs.70,000/- + Rs.40,000/- + Rs.79,896/-).

10. In the result, M.A.C.M.A.No.2363 of 2006 is allowed and M.A.C.M.A.No.1896 of 2008 is dismissed by enhancing the compensation amount awarded by the Tribunal from Rs.8,55,240/- to Rs.17,36,948/-. The enhanced amount shall carry

interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.15,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 01.10.2019
TJMR