THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2752 OF 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 28.09.2006 passed in O.P.No.89 of 2005 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nalgonda, at Suryapet (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is wife, petitioners 2 & 3 are the daughters and petitioners 4 & 5 are the parents of the deceased-Makkaraju Venkata Krishnam Raju. On 06.01.2002 at 11.00 p.m., the deceased was coming along with his friend Md. Abdul Majeed from cinema theatre by walk, when they reached in front of Swathi Theatre on National High Way No.9, one Tata Sumo bearing No.AP-28-G-6687 came from back side i.e., Hyderabad side while proceeding towards Vijayawada in high speed in rash and negligent manner and dashed the deceased, due to which he received grievous injuries to head, legs, hands and other parts of the body. Immediately, he was shifted to Dr.Gurvaiah Hospital at Kodad and on his advise, he was shifted to Sowmya Apollo Hospital at Tadepalli. The deceased died on 07.01.2002 at 10.00 a.m. Prior to the

accident, the deceased was hale and healthy and he was working as Manager in Sri Sai Ganesh Auto Financiers, at Kodad. The petitioners, who are the family members of the deceased, are in shock and lost their livelihood. Hence, the petitioners filed the claim petition claiming compensation of Rs.5,00,000/-, payable by both the respondents, being the owner and insurer of the offending car.

4. 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.

5. After considering the oral evidence of P.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-10 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending car and awarded total compensation of Rs.1,99,500/- i.e., Rs.1,80,000/- towards loss of income, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, with interest @ 9% per annum from the date of petition till the date of deposit, payable by both the respondents. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard Sri M.Madhava Reddy, learned counsel for the appellants and Sri R.Venkata Rao, learned standing counsel for

the 2nd respondent/insurance company. Perused the material record.

7. Sri M.Madhava Reddy, learned counsel for the appellants, submitted that though the petitioners produced Ex.A10-Service Certificate of the deceased to show that the deceased was earning Rs.4,000/- per month by working as Manager in Sri Sai Ganesh Auto Financiers, at Kodad, at the time of the accident, but the Tribunal erroneously disbelieved the same and fixed the income of the deceased at Rs.18,000/- per annum, which is very low. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects since the age of the deceased was 40 years at the time of the accident, 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 in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[2]**, appellant Nos.4 & 5, being the parents of the deceased, are entitled to Rs.40,000/- each towards loss of filial consortium.

8. Sri R.Venkata Rao, learned standing counsel appearing for respondent No.2/insurance company, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

[1] 2017(6) ALD 170 (SC)
[2] 2018 LawSuit (SC) 904

9. Admittedly, as per Ex.A-10-Salary Certificate of the deceased, this Court feels that it would be just and proper if the monthly income of the deceased is fixed @ Rs.4,000/-. Apart from the same, since the deceased was aged about 40 years as on the date of the accident, 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, monthly income of the deceased comes to Rs.5,600/- (Rs.4,000/- + Rs.1,600/- (40%)), and after deduction of 1/4th towards personal deductions of the deceased since there are five family members of the deceased, the monthly income of the deceased would come to Rs.4,200/- (Rs.5,600/- - Rs.1,400/- (1/4)). Therefore, the annual income of the deceased comes to Rs.50,400/- (Rs.4,200/- X 12 months). The multiplier for the age of the deceased is '15' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[3]. Hence, the compensation under the head of 'loss of income' comes to Rs.7,56,000/- (Rs.50,400/- X 15). 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 Alias Chuhru Ram**'s case (supra), a sum of Rs.40,000/- each is granted to appellant Nos.4 & 5, who are the parents of the deceased. Therefore, the total compensation comes to Rs.9,06,000/- (Rs.7,56,000/- + Rs.70,000/- + Rs.80,000/-).

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[3] (2009) 6 SCC 121

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,99,500/- to Rs.9,06,000/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 9th December, 2019

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