

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2361 of 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 10-08-2004 passed in O.P.No.470 of 2001 by the M.A.C.T.-cum-District Judge, Adilabad (for short, the Tribunal).

2. Brief facts of the case are that the claimants, who are the parents of the deceased-Priyanka, filed the claim petition against the respondent-RTC claiming compensation of Rs.1.20 lakhs for the death of the deceased in the accident occurred on 09-01-2001 due to the rash and negligent driving of the driver of the bus bearing No.AP-9-Z-5235, when she is proceeding in the same vehicle from Mallangi to Kerameri.

3. In the claim petition, the respondent-RTC 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 on the part of the driver of the crime vehicle only. So far as granting of compensation is concerned,

the Tribunal granted an amount of Rs.57,000/-, payable by the respondent with interest at 6% per annum through out.

5. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent-RTC.

7. Learned counsel for the appellants-claimants contends that it is a case of death and at the time of accident, the deceased was aged about 7 years. He further contends that the Tribunal erred in awarding fixed compensation of Rs.57,000/- without following the method of calculating the compensation based on the notional income. He further contends that as per latest law laid down by the Supreme Court, the claimants are entitled to be granted compensation under the heads like loss of filial and conventional etc. Therefore, the claimant is entitled for fair compensation.

8. Learned Standing Counsel for the respondents-RTC, contends that the Tribunal awarded compensation in a just and proper manner and he supported the order passed by the Tribunal and prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has awarded fixed amount of compensation. Admittedly, there is no dispute with regard to award compensation based on the notional

income. It is a case of death and that the deceased was aged about 7 years at the time of accident. While going to school in her school bus by standing besides the driver seat and because of the jerks, the door, which was not properly closed, got opened and she pulled down on the road and she came under the wheel and died on the spot.

10. This Court in number of cases, expressed its opinion that once the deceased or the injured fell on the ground/road from the vehicle and if the vehicle ran over the body of the deceased/injured, the claimants are entitled for compensation since the accident has to be treated under Act policy as the claimants/deceased would be considered as third party.

11. Further, in the absence of proof of income, since the child is not an earning member, notional income can be taken @ Rs.30,000/- per annum as per the decision of the Supreme Court in **Kishan Gopal and another v. Lala and others**¹.

12. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi**², the deceased is entitled to be granted future prospects at 40%. Then her annual income comes to Rs.42,000/- (30000 + 12000); Considering that she was unmarried, 50% of the said income towards personal expenditure can be deducted, then it comes to Rs.21,000/- per annum. Further, since at the time of accident, the deceased was aged about 7

¹ 2013 (6) ALD 59 (SC)

² 2017 (6) 170 (SC)

years, the correct multiplier to be applied is '15'. Hence, the total loss of income comes to Rs.3,15,000/- (21000 x 15).

13. Further, since the deceased was a child, the claimants are also entitled to be granted compensation of Rs.30,000/- towards conventional head as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi**³.

14. Further, being parents of the deceased, the claimants are also entitled to be granted compensation of Rs.80,000/- (Rs.40,000/- each) towards loss of filial as per the decision of the Supreme Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram**⁴.

15. Therefore, the claimants are granted total compensation of Rs.4,25,000/- (Rs.3,15,000/- + Rs.30,000/- + Rs.80,000/-) under all those heads.

16. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.57,000/- to Rs.4,25,000/- (Rupees Four Lakhs Twenty Five Thousand only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellants/claimants are directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the

³ 2017 (6) 170 (SC)

⁴ 2018 Law Suit (SC) 904

appellants/claimants are permitted to withdraw the entire amount. No costs.

17. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 06.12.2019
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