

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1447 OF 2006

JUDGMENT:

This appeal is filed by the claimants aggrieved by the order and decree dated 22.02.2006 passed in O.P.No.562 of 2002 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Mahabubnagar, (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the husband and appellant Nos.2 and 3 are the children of the deceased- Shyamamma; that on 22.11.2001 at about 3 pm., when the deceased was returning home after drying the grains and reached Undekota Village, the tractor and trailer bearing Nos.AP 22/B-1957 and 1958 respectively, being driven by its driver in a rash and negligent manner dashed the deceased, due to which she sustained injuries and that while undergoing treatment at Atmakur Government Civil Hospital, she succumbed to the injuries. Hence, the claimants filed the aforesaid MVOP claiming compensation of Rs.2,50,000/- against the owner and the insurer of the offending vehicle i.e., respondent Nos.1 and 2 herein respectively.

3. Before the Tribunal, respondent Nos.1 and 2 filed separate counters, wherein they denied that the driver of the offending tractor drove the same in a rash and negligent manner and caused the accident. It is contended that the compensation 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 tractor and accordingly, awarded a total compensation of Rs.2,50,000/- with proportionate costs and interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal seeking enhancement of the same.

5. Heard learned counsel for the appellants and the learned Standing Counsel for respondent No.2-insurance company and perused the evidence and material on record.

6. Learned counsel for the appellants submitted that the appellants are entitled to addition of 40% on the income of the deceased towards future prospects as per the ratio laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi¹ and that the Tribunal has not granted compensation towards loss of love and affection and also conventional charges. Hence, he prayed to grant the compensation under the said heads.

7. Sri S.Siva Prasad, learned Standing Counsel for respondent No.2-insurance company, submitted that the Tribunal passed a well-reasoned order and sought to dismiss the appeal.

8. A perusal of the evidence on record goes to show that except the oral testimony of P.W-1-the husband of the deceased, there is no corroboration to his evidence to show that the deceased was doing

¹ 2017(6) ALD 170 (SC)

agriculture and attending to dairy farming in the village and earning certain amount. However, keeping in view the fact that in the F.I.R., P.W-1 has specifically stated that the deceased was working as an agricultural coolie, this Court is inclined to take the notional income of the deceased at Rs.3,000/- per month though as per Ramachandrappa v. Royal Sundaram Alliance Insurance Com. Ltd.², the notional income of a person has to be taken at Rs.4,500/- per month. 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 (1 supra). Therefore, the monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-). If 1/3rd of Rs.4,200/- is deducted towards the personal expenses of the deceased, her annual contribution to the family comes to Rs.33,600/- (Rs.2,800/- X 12 months).

9. In the post-mortem report-Ex.A-3, the deceased was shown to be aged 38 years at the time of the accident. Though P.W-1 deposed that the deceased was aged 37 years at the time of accident, the same is inconsistent with the contents of the F.I.R. Apart from that, the inquest report was not filed to test the veracity of these versions. Therefore, as no other document has been produced to prove the age of the deceased, the Tribunal has rightly done the guess work and took the deceased to be aged about 40 to 45 years at the time of the accident. Thus, applying the multiplier of '15' as per Schedule-II of the Motor Vehicles Act, the compensation under the head 'loss of income' comes to Rs.5,04,000/-

² (2011) 13 S.C.C. 236

(Rs.33,600/- X 15). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional charges as per Pranay Sethi (1 supra). Since appellant Nos.2 and 3 were the minor children of the deceased as on the date of the incident, they are entitled to Rs.50,000/- each towards loss of love and affection as per **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**³. In all, the appellants-claimants are entitled to a total compensation of Rs.6,74,000/- (Rs.5,04,000 + Rs.70,000/- + 1,00,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,50,00/- to Rs.6,74,000/-. The enhanced amount shall carry interest @ 7.5% per annum. As the claimants claimed only Rs.2,50,000/- before the Tribunal, they are directed to deposit deficit court fee while withdrawing the amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

24th October, 2019
dr

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³ 2018 LawSuit (SC) 904