THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.2841 OF 2005 & 1949 OF 2006

COMMON JUDGMENT:

Since both the appeals arise out of an order dated 30.06.2005 passed in O.P.No.1101 of 1999 by the Motor Accidents Claims Tribunal (I Additional District Judge) at Mahabubnagar (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.2841 OF 2005:

2. This appeal is filed by the appellants/claimants on the ground that the Tribunal awarded meager compensation of Rs.9,60,000/- against the claim of Rs.20,00,000/- for the death of A.Ravikumar Reddy.

M.A.C.M.A.No.1949 OF 2006:

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.2841 of 2005.

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 Nos.4 and 5 are the parents of the deceased, A.Ravikumar Reddy. On 28.02.1998 at about 3 or 3.30 pm., while the deceased was coming on his scooter bearing No.MH31L 1096 on Nagpur-Chandrapur road, a Trax jeep bearing No.MH34 6169 cam in the opposite

direction in a rash and negligent manner and dashed the scooter. In the said accident, the deceased received fatal injuries and he was shifted to G.M.C.H. Hospital, Nagpur, where he was declared dead. The appellants filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of the aforesaid jeep, respectively, claiming compensation of Rs.20,00,000/- for the death of the deceased.

6. Before the Tribunal, owner of the jeep remained *ex parte.* The Insurance Company filed counter denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and prayed to dismiss the claim petition.

7. 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 jeep and awarded total compensation of Rs.9,60,000/- under various heads, with interest at the rate of 9% per annum.

8. Sri A.Vishnu Vardhan Reddy, learned counsel for the claimants, submits that the deceased used to get 20% commission as profit per year for supply of labour to a company; that the deceased also used to get Rs.30,000/- per month by giving his three tractors on hire; and that he was earning a sum of Rs.50,000/- per annum by cultivating his. He further submits that though the claimants produced the sufficient evidence to prove aforesaid incomes of the deceased, the Tribunal wrongly fixed the

income of the deceased at lower side. He further submits that as the dependants are four in number, the Tribunal ought to have deducted personal expenses of the deceased at $1/4^{th}$ instead of $1/3^{rd}$. He further submits that the claimants are also entitled to addition of 40% 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. Ltd. Vs. Pranay Sethi[1].** He further submits that appellant Nos.2 and 3, being the minor children of the deceased, are entitled to Rs.50,000/- each towards loss of parental consortium and appellant No.5, being the mother 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[2]**. Basing on the above submissions, he prays to enhance the compensation amount.

9. Sri E.Venugopal Reddy, learned counsel for the insurance company, submits that the age of the deceased is 29 years and the appropriate multiplier for calculation of compensation is '17' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation[3],** but the Tribunal wrongly adopted the multiplier '18'. He further submitted there is contributory negligence on the part of the deceased in the accident and hence the insurance company is not liable to pay the compensation and he seeks to set aside the order of the Tribunal.

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[1] 2017(6) ALD 170 (SC)
[2] 2018 Law Suit (SC) 904
[3] 2009(6) SCC 121

10. It is clear from the record that though the claimants claimed that the deceased was getting 20% commission as profit for the supply of labour and that for the years 1997-98, the income of the deceased was Rs.3,20,000/- under that head, the Tribunal after considering the oral and documentary evidence, fixed the income of the deceased at Rs.67,000/- per year, which is just and reasonable. Insofar as the claim of the claimants that the deceased was used to earn Rs.30,000/- per month by hiring his three tractors is concerned, the Tribunal dismissed the same on the ground that the purpose of tractor is to carry all kinds of own agricultural works, but not for any other purposes, which is also just and reasonable. Coming to agricultural income, as there was no documents to show that the deceased used to attend the cultivation and generate income at his native place, the Tribunal fixed the income of the deceased from agriculture at Rs.10,000/- per year, which is also just and reasonable. Though the Tribunal disbelieved the evidence of P.W.3, in this regard, to some extent, but gave reasoning for admitting the source of income and came to the conclusion that Rs.67,000/- appears to be reasonable, as the deceased was leading a comfortable life and providing all facilities to the dependants which is not possible for him if there is no sufficient income. The Tribunal discussed oral and documentary evidence in detail for fixing the aforesaid incomes of the deceased and hence, I see no ground to interfere with the same and the same are confirmed.

11. Coming to the other aspects, as there are four dependants, the Tribunal ought to have deducted personal expenses of the

deceased at 1/4th instead of 1/3rd. That apart, the Tribunal erred in adopting the multiplier '18' in stead of '17', as the deceased was aged about 29 years. Though the learned counsel for the insurance company argued that there is contributory negligence on the part of the deceased in the accident and hence the insurance company is not liable to pay the compensation, no evidence is adduced by the insurance company before the Tribunal as well as this Court to prove the same. Therefore, the said contention is rejected.

12. Coming to the quantum of compensation, the income of the deceased, as fixed by the Tribunal at Rs.77,000/- per annum, is taken into consideration. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, yearly income of the deceased comes to Rs.1,07,800/- (Rs.77,000/- + Rs.30,800/-), and after deduction of 1/4th, as the dependants are four in number, the annual income comes to Rs.80,850/- (Rs.1,07,800/- minus 26,950/-). As the deceased was aged about 29 years, the appropriate multiplier is '17'. Hence, the compensation under the head 'loss of dependency' comes to Rs.13,74,450/- (Rs.80,850/- X 17). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). As appellant Nos.2 and 3 are minor children, they are entitled to Rs.1,00,000/- (Rs.50,000/- each) towards parental consortium and respondent No.5, being the mother of the deceased, is entitled to Rs,40,000/- as per **Nanu Ram Alias Chuhru Ram**'s case (supra). Therefore, the total compensation

comes to Rs.15,84,450/- (Rs.13,74,450/- + Rs.70,000/- + Rs.1,00,000/- + Rs.40,000/-).

13. In the result, M.A.C.M.A.No.2841 of 2005 is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.9,60,000/- to Rs.15,84,450/- and M.A.C.M.A.No.1949 of 2006 is dismissed. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 05-12-2019
TJMR