

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2230 OF 2006

JUDGMENT:

This appeal is filed by the appellants/claimants aggrieved by the Order and Decree dated 14.07.2006 passed in O.P.No.982 of 2003 by the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, Court below).

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

3. The brief facts of the case are that the claimants are the father and mother of the deceased-Balaji, who was aged about 20 years and working as an electrical helper and drawing Rs.2,400/- per month at the time of the accident and he was the only son of the petitioners. On 16.02.2003 about 11.00 a.m., the deceased and his friend Anand Kumar were going from Dilsukhnagar to Amberpet on their bicycles and when they reached the Mandal Revenue Office, Moosarambagh road, a lorry bearing No.AIT 5333 came in a high speed and in a rash and negligent manner and dashed against the cycle of Balaji, as a result he fell down and sustained grievous injuries and died. The accident occurred due to the rash and negligent driving of the driver of the offending lorry. Due to the death of the deceased, the petitioners have lost his love and affection and their sole source of dependence. Hence, the petitioners filed the

claim petition claiming compensation of Rs.3,00,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed a 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 to 3 and R.W.1 and documentary evidence of Exs.A-1 to A-7, Ex.B-1 & Ex.X-1, the Court below granted total compensation of Rs.1,52,000/-, with interest @ 7.5% per annum from the date of petition till realization, i.e., Rs.1,50,000/- towards loss of income and Rs.2,000/- towards funeral expenses. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal seeking enhancement of the same.

6. Heard Sri V.Atchuta Ram, learned counsel for the appellants/claimants and Sri A.V.K.S. Prasad, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Mr.V.Atchuta Ram, learned counsel appearing for the appellants/claimants, submitted that though P.W.2, who is the employer of the deceased, deposed that the deceased has been working as a helper in 'S.S. Electricals' and he was paying Rs.2,400/- per month to the deceased at the time of the

accident, but the Court below erroneously disbelieved the same and fixed the notional income of the deceased at Rs.15,000/- 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 as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. 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, the appellants, being the father and mother of the deceased, are entitled to Rs.40,000/- each under the head of loss of filial consortium.

8. Sri A.V.K.S. Prasad, learned standing counsel appearing for the 2nd respondent/insurance company, submitted that the Court below passed a well reasoned order and sought to dismiss the appeal.

9. In view of the settled law laid down by the Apex Court on different issues in several decisions, the entire compensation needs to be re-determined. Though as per the evidence of P.W.2, the deceased was working as a helper in 'S.S. Electricals' and was getting Rs.2,400/- per month at the time of the accident, the Court below wrongly did not take it into consideration. In the circumstances of the case, this Court is inclined to take the monthly income of the deceased @

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

Rs.2,400/- 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** (supra). Therefore, monthly income of the deceased comes to Rs.3,360/- (Rs.2,400/- + Rs.960/- (40%)), and after deduction of 50% towards personal expenses of the deceased since the deceased was unmarried at the time of the accident, the net monthly income of the deceased comes to Rs.1,680/- (Rs.3,360/- - Rs.1,680/- (50%)). Therefore, the annual income of the deceased comes to Rs.20,160/- (Rs.1,680/- X 12 months). Since the age of the deceased was 20 years at the time of the accident, the multiplier for the age of the deceased is '18' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**³. Hence, the compensation under the head 'loss of income' comes to Rs.3,62,880/- (Rs.20,160/- X 18). The appellants are also entitled to Rs.30,000/- 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 the appellants, who are parents of the deceased, under the head of loss of filial consortium. Therefore, the total compensation comes to Rs.4,72,880/- (Rs.3,62,880/- + Rs.30,000/- + Rs.80,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded

³ (2009) 6 SCC 121

by the Court below from Rs.1,52,000/- to Rs.4,72,880/- 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.3,00,000/-, they are directed to deposit deficit Court fee before the Court below. 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 Court below, subject to payment of deficit court fee. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 21st November, 2019

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