THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.505 OF 2010

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 24.11.2009 passed in O.P.No.1988 of 2008 by the Motor Vehicles Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, Tribunal).

2. The brief facts of the case are that the deceased Late Jithender was hale and healthy, aged about 35 years and he was doing fruit business and earning Rs.10,000/- per month. On 14.07.2008 at about 7.00 p.m., near Padmalaya Polymers X Roads, Domadugu Village, while the deceased was proceeding on a scooter with his friend, the driver of crime lorry bearing No.AP 28TA 2626 drove it in a rash and negligent manner and dashed the scooter, as a result of which the deceased sustained grievous injuries and died. Case was registered against the driver of crime vehicle. The 1st respondent is the owner of crime vehicle and the 2nd respondent is the insurer of the said crime vehicle and they have joint liability. All the appellants are dependents on the income of the deceased. Hence, the appellants claimed compensation of Rs.9,00,000/-.

3. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed 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 evidence produced by the parties, the Tribunal granted total compensation of Rs.3,36,600/-, with interest @ 7.5% per annum from the date of petition till realization, i.e., 3,60,000/- towards loss of earnings and Rs.14,000/- towards consortium to the 1st appellant totaling to Rs.3,74,000/-, but since the culpability of negligence on the part of driver of crime vehicle is fixed as 90%, the Tribunal granted an amount of Rs.3,36,600/- as compensation. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. As against the monthly income of Rs.10,000/- since the deceased was doing fruit business, the Tribunal has considered the monthly income of the deceased as Rs.3,000/- since there is no income proof. According to the appellants, the deceased was aged 35 years, but in Ex.A-4 Post Mortem Certificate, the age of the deceased is shown as 36 years. Thus, the Tribunal has considered the age of the deceased as 36 years. Hence, this Court is also inclined to consider the age of the deceased as 36 years. Insofar as fixing of the income, since the deceased is doing fruit vending business, following the decision reported in **Syed Sadiq and others v. Divisional Manager, United India Insurance Co. Ltd.[1],** a notional income of Rs.6,500/- per month is considered as reasonable. The Tribunal did not grant any

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[1] 2014 ACJ 627

amount towards future prospects. Hence, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi[2].** Therefore, the monthly income of the deceased comes to Rs.9,100/- (Rs.6,500/- + Rs.2,600/- (40%)), and after deduction of 1/4th towards personal expenses of the deceased since there are five family members, which comes to Rs.6,825/- (Rs.9,100/- -Rs.2,275/- (1/4)), the annual income comes to Rs.81,900/- (Rs.6,825/- x 12 months). Since the deceased is aged 36 years, a multiplier of '15' has to be applied 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.12,28,500/- (Rs.81,900/- x 15). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). Therefore, the total compensation comes to Rs.12,98,500/- (Rs.12,28,500/- + Rs.70,000/-). With regard to the observation of the Tribunal regarding contributory negligence at 10% is concerned, the same is not disputed since the deceased was on a triple riding of the bike. Hence, the total compensation comes to Rs.11,68,650/- (Rs.12,98,500/- - Rs.1,29,850/- (10%)). With regard to the interest on the enhanced amount, interest of 7.5% shall be computed. Except the said modification, the order of the Tribunal remains unchanged.

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[2] 2017(6) ALD 170 (SC)
[3] (2009) 6 SCC 121

7. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.3,36,600/- to Rs.11,68,650/- with interest @ 7.5% per annum on the enhanced amount. The respondents are directed to deposit the enhanced amount within two months from the date of receipt of a copy of this order. On such deposit, the 1st appellant, who is major, is permitted to withdraw her proportionate share with proportionate interest and costs by following the procedure established by law on payment of deficit Court fee, as the appellants claimed only Rs.9,00,000/-. It is needless to state that the respective proportionate shares of appellants 2 to 5, who are minors, shall be kept in Fixed Deposit in a Nationalized bank, till they attain majority. No costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

T.AMARNATH GOUD, J

Date: 19th June, 2019

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