

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.4312 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 12.06.2008 passed in O.P.No.2653 of 2006 by the V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, City Criminal Courts, At Hyderabad (for short, the Court below).

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

3. The brief facts of the case are that the appellants are the parents of the deceased, who died in a motor accident which occurred on 06.03.2006 at about 7.00 a.m. On 06.03.2006, the deceased was going on foot by the side of the road and when she reached near Guntur Vikas College, at Hydernagar bus stop, a Hero Honda Splendor motor cycle bearing No.AP 28AE 7560, came in a rash and negligent manner, proceeding from BHEL towards Kukatpally and dashed against the deceased, as a result of which the deceased sustained fractures of head, chest bones and legs, besides other injuries. She was shifted to Apollo Hospital, Kukatpally, and after first aid, she was shifted to NIMS Hospital, Punjagutta. The deceased was studying Intermediate and was also doing part time tailoring and earning Rs.3,250/- per month. She has been contributing her income to the petitioners. Due to her sudden death, the petitioners, who had

lot of hopes on her future, are put to loss of all such hopes and also future support. Hence, the petitioners claimed an amount of Rs.4,00,000/- as compensation.

4. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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.

5. 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 motor cycle and awarded total compensation of Rs.2,67,000/-, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Sri P.Ramakrishna Reddy, learned counsel for the appellants, submitted that though the appellants have stated that the deceased was studying Intermediate and was doing part time tailoring and earning Rs.3,250/- per month and contributing her income to the petitioners, the Tribunal has taken the monthly income of the deceased @ Rs.5,000/- per month and considering that 1/3rd of her income was contributed to the appellants, the Tribunal has taken the monthly income of the deceased @ Rs.1,666/- and arrived at the annual income of Rs.19,992/-, which is very meager. 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 & Others¹, the appellants, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of love and affection.

7. Sri K.Madhusudhan Reddy, learned counsel appearing for respondent No.2, vehemently opposed and contended that the appeal needs no consideration and order of the Tribunal has to be confirmed and the same has to be dismissed without awarding any enhancement and further contended that since the O.P. is filed under Section 163-A of the Motor Vehicles Act, 1988, the annual income of Rs.40,000/- will come in the way and the claimants are restrained from seeking any enhancement as per the second schedule of the Motor Vehicles Act, 1988.

8. Having regard to the submissions made by the learned standing counsel for the 2nd respondent/insurance company, this Court feels that it would be just and proper if the annual income of the deceased is fixed @ Rs.40,000/-. Since the deceased being unmarried, 50% shall be deducted towards personal expenses. Therefore, the net annual income of the deceased comes to Rs.20,000/- (Rs.40,000/- - Rs.20,000/- (50%)). Since the deceased is aged 17 years at the time of the accident, the multiplier applicable as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**² is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.3,60,000/- (Rs.20,000/- X 18). The appellants are also entitled to Rs.30,000/- towards conventional charges, as per

¹ 2018 LawSuit (SC) 904

² (2009) 6 SCC 121

National Insurance Co. Ltd. Vs. Pranay Sethi³. In the light of **Nanu Ram Alias Chuhru Ram's** case (supra), a sum of Rs.40,000/- each is granted to the appellants under the head of loss of filial consortium. The Medical expenses awarded by the Tribunal @ Rs.16,996/- remains the same. Except the said modification, the rest of the award passed by the Tribunal remains un-changed. Therefore, the total compensation comes to Rs.4,86,996/- (Rs.3,60,000/- + Rs.30,000/- + Rs.80,000/- + Rs.16,996/-). The same is rounded off to Rs.4,87,000/-.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,67,000/- to Rs.4,87,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.4,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. 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 Tribunal, subject to payment of deficit court fee. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24.09.2019
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³ 2017(6) ALD 170 (SC)