THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2029 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 28.02.2008 passed in O.P.No.265 of 2007 by the XI Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 to 4 are the minor children, appellant No.5 is the mother and appellant No.6 is the sister of the deceased, Mytri Suman @ Sumanth. On 11/12-2-2007 at 1.30 A.M., while the deceased was traveling as a cleaner-cum-labourer on a DCM van bearing No.GJ01 AT 3882 from Hyderabad towards Zaheerabad on NH No.9, and when the said van reached near Friends Dhaba, the driver of said van drove the same in a rash and negligent manner and dashed a lorry bearing No.MH04H 9592, due to which, the deceased as well as the driver sustained grievous injuries and died on the spot. The claimants filed aforesaid OP claiming compensation of Rs.5,00,000/- against respondents 1 and 2, owner and insurer of the van, for the death of the deceased.

3. 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.

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

DCM van and awarded total compensation of Rs.2,43,500/-, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri B.Venkat Reddy, learned counsel for the appellants, submitted that though the appellants produced evidence to the effect that the deceased was earning Rs.4,500/- per month as Cleaner, the Tribunal fixed the income of the deceased at Rs.20,000/- per annum, which needs to be enhanced by applying appropriate multiplier as per **Smt. Sarla Varma Vs. Delhi Transport Corporation**[1] He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and 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**[2]**.** 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**[3], appellant Nos.2 to 4 are entitled to Rs.50,000/- each, being the minor children of the deceased, under the head parental consortium and appellant No.5, being the mother of the deceased, is entitled to Rs.40,000/- under the head filial consortium.

6. Sri N.S.Bhaskar Rao, learned counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

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[1] 2009 (6) SCC 1211
[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904

7. Since the appellants have not filed any proof of evidence to show that the deceased was earning Rs.4,500/- per month, the Tribunal notionally fixed the income of the deceased at Rs.20,000/- per annum, but the same is meager. In the facts and circumstances of the case, this Court is inclined to fix the notional income of the deceased as Rs.36,000/- per annum. Since there are six dependants, 1/4th of his income should be deducted towards personal expenditure as decided by the Apex Court in **Smt. Sarla Varma** (Supra). The Tribunal has wrongly adopted the multiplier of '18' instead of '17' as the deceased was aged about 26 years at the time of accident. 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, annual income of the deceased comes to Rs.50,400/- (Rs.36,000 + Rs.14,400/- future prospects). After deducting 1/4th towards personal expenses, the income of the deceased comes to Rs.37,800/- per annum. The multiplier for the age of the deceased is '17'. Hence, the compensation under the head 'loss of income' comes to Rs.6,42,600/- (Rs.37,800/- X 17). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram**'s case (supra), a sum of Rs.1,50,000/- (Rs.50,000/- X 3) is granted to the appellants 2 to 4, being the minor children, and Rs.40,000/- is granted to appellant No.5, being the mother of the deceased. Therefore, the total compensation comes to Rs.9,02,600/- (Rs.6,42,600/- + Rs.70,000/- + Rs.1,50,000/- + Rs.40,000/-).

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

Tribunal from Rs.2,43,500/- to Rs.9,02,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The appellants are directed to pay the Court fee over above the amount claimed by them. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 05.08.2019.
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