

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.NO.1267 OF 2008

JUDGMENT:

This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 05.10.2007 in O.P.No.2175 of 2006 passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal') granting compensation of Rs.81,000/- against the claim of Rs.5,00,000/- .

2. The brief facts of the case are that appellant Nos.1 and 2 are the father and mother of the deceased, Vikram Kumar. On 21.07.2006, while the deceased was driving his motorcycle, a lorry bearing No.AP16W 4700 came in the opposite direction and dashed the motorcycle, as a result of which, the deceased sustained grievous injuries and died while undergoing treatment on 22.07.2006 at Apollo Hospitals. The appellants filed aforesaid OP against respondent Nos.1 to 3, owner, driver and insurer of the aforesaid lorry, seeking compensation of Rs.5,00,000/- for the death of the deceased in the said accident.

3. Before the Tribunal, respondent Nos.1 and 2 remained *ex parte*. Respondent No.3 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.

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 lorry and awarded total compensation of Rs.81,000/- 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 P.Ramakrishna Reddy, learned counsel for the appellants, submitted that attributing contributory negligence on the ground of non-possession of driving license or a minor driving the vehicle cannot be accepted and therefore, the order of the Tribunal in that regard should be set aside. In support of his argument, he relied on **Saraswati Palariya v. New India Assurance Co. Ltd.**¹. By relying on a decision of the Hon'ble Supreme Court in **V. Mekala v. M. Malathi**², the learned counsel seeks to fix the income of the deceased, who is a student, at Rs.10,000/- per month. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.30,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³. He further submitted that as per Ex.A.5-postmortem report, the age of the deceased is 17 and the appropriate multiplier for calculation of compensation is '18' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**⁴, but the Tribunal wrongly adopted the multiplier '16'. He further submitted that the appellants, being the father and mother of the deceased, are entitled to Rs.40,000/- each towards loss of parental consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd.**

¹ 2019 ACJ 42

² 2014 ACJ 1441

³ 2017(6) ALD 170 (SC)

⁴ 2009(6) SCC 121

Vs.Nanu Ram Alias Chuhru Ram⁵. On the above grounds, he sought to enhance the compensation.

6. Sri B.Narayana Reddy, learned Standing Counsel for respondent No.3, submitted that as the deceased was a bachelor, the Tribunal ought to have deducted 50% of the income towards personal expenditure, but the Tribunal wrongly deducted 1/3rd. He further submitted that except the same, the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. A perusal of the order of the Tribunal, it is clear that on the ground that the deceased is a minor and not entitled to have a driving licence, the Tribunal attributed the contributory negligence at 50% to the deceased. In **Saraswati Palariya's** case (supra), the Hon'ble Supreme Court, while dealing with the issue of attributing contributory negligence, held that driving without a valid license may expose the claimant to other liabilities, but no inference of contributory negligence can be arrived on that basis. In view of the same, I am inclined to set aside the finding of the Tribunal in respect of attributing the contributory negligence to the deceased at 50%. In the light of the decision of the Hon'ble Supreme Court in **V.Mekala's** case (supra), I am inclined to fix the income of the deceased, who was an above average student, at Rs.10,000/- per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi's** case (supra). Therefore, monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-), and after deduction of 50%, as the deceased was a bachelor, the annual income comes to Rs.84,000/- (Rs.7,000/- X 12). As the deceased was aged 17 years as per Ex.A.5, the appropriate

⁵ 2018 Law Suit (SC) 904

multiplier is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.15,12,000/- (Rs.84,000/- X 18). Apart from the same, the appellants are entitled to Rs.30,000/- towards conventional heads, as per **Pranay Sethi's** case (supra). The appellants, being the parents of the deceased, are entitled to Rs.80,000/- (Rs.40,000/- each) towards parental consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.16,22,000/- (Rs.15,12,000/- + Rs.30,000/- + Rs.80,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.81,000/- to Rs.16,22,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

(T.AMARNATH GOUD, J)

5th August 2019
RRB