HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. No.4134 of 2004

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 15-06-2004 passed in O.P.No.686 of 1999 by the M.A.C.T. (District Judge), at Nizamabad (for short, 'the Tribunal').

2. Brief facts of the case are that on 19-03-1999 at about 5 pm, when the deceased –Ullagara Janardhan was traveling as pillion rider on Suzuki Motor Cycle No.AP 15 F 7558 along with one Mahender to go to cinema and when they reached near Kurthi village cross roads, due to rash and negligent driving of the motorcycle by the said Mahender, accident occurred and he received severe injuries and that subsequently, he succumbed to the said injuries. Hence, the claimants who are parents of the deceased, filed the claim petition claiming compensation of Rs.3.00 lakhs against the respondents, who are owner and insurer of the crime vehicle by contending that the deceased was a gold smith and earning Rs.7,500/- per month.

3. In the claim petition, the 2nd respondents-insurer 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 crime vehicle and therefore, the respondents are liable to pay the compensation. So far as quantum of compensation granted is concerned, the Tribunal granted an amount of Rs.83,500/- i.e. Rs.76,800/- towards loss of dependency; Rs.2,500/- towards loss of estate; Rs.5,000/- towards shock, pain and agony; and Rs.4,200/- towards funeral expenses. Accordingly, it partly allowed the claim petition by granting compensation of Rs.83,500/- with interest at 7.5% per annum through out.

5. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellants-claimants and Sri Srinivasa Rao Vutla, learned Standing Counsel, appearing for the 2nd respondent-insurer.

7. Learned counsel for the appellants-claimants contends that the trial Court ought to have taken the monthly income of the deceased @ Rs.4,500/- per month at least instead of taking Rs.1200/- per month as notional income as he used to earn Rs.7,500/- per month by working as gold smith; that the Tribunal also ignored in granting 40% future prospects as the claimant is aged about 18 years only at

the time of accident as held by the Apex Court in **Natinal Insurance Co. Ltd. v. Prinay Sethi**[1]**;** that as per the decision of the Supreme court in **Smt. Sarla Varma v. Delhi Transport Corporation**[2]**,** at the age of 18, the appropriate multiplier is '18' instead of '8' applied by the trial Court; that since the deceased was a bachelor, the claimants are also entitled to be granted compensation of Rs.30,000/- towards conventional head as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi**[3]**;** that being parents of the deceased, the claimants are also entitled to be granted compensation of Rs.80,000/- (Rs.40,000/- each) towards loss of filial as per the decision of the Supreme Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram**[4]**;** and therefore, he prayed to enhance the compensation as the claimants are entitled to the same.

8. Sri Srinivasa Rao Vutla, learned counsel appearing for 2nd respondent, contends that there is no proof of income in this case; in the cases of this nature, a sum of Rs.100/- per day is to be taken into consideration; that according to the age of the deceased i.e. for the persons between 18 and 21 age group, standard deduction is to be taken @ 50% but not 1/3rd as taken by the trial Court; further as there is no standard income or permanent salary to the deceased, according to the judgment of the Supreme Court in **Smt. Sarla Varma** (2 supra),

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[1] 2017 (6) 170 (SC)
[2] (2009) 6 S.C.C. 121
[3] 2017 (6) 170 (SC)
[4] 2018 Law Suit (SC) 904

the claimants cannot be granted future prospects at all; and therefore, he prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has taken monthly income of the claimant at Rs.1200/- per month as notional income. However, as contended by the learned counsel for the claimant, the deceased was working as gold smith and earning some income and therefore considering his nature of profession, taking his monthly income @ Rs.3,000/- per month is just and reasonable. Then his annual income comes to Rs.36,000/-. In addition to that, if an amount of Rs.14,400/- i.e. 40% future prospects is added, it comes to Rs.50,400/-. Further as rightly contended by the learned counsel for the 2nd respondent-insurer, personal deduction should be taken @ 50% instead of 1/3rd. Then it comes to Rs.25,200/- per annum. Further, as the appropriate multiplier is '18' instead of '8' as applied by the trial Court, the total compensation under the head of loss of dependency comes to Rs.4,53,600/- (25200 (x) 18).

10. Further, the appellants/claimants are also entitled to an amount Rs.30,000/- towards conventional head as per **Pranay Sethi** (3 supra) and Rs.80,000/- (Rs.40,000/- each) towards filial charges as per **Magma General Insurance Co. Ltd.,** (4 supra).

11. Except the above modification, the compensation awarded by the Tribunal under other additional heads viz., funeral and pain and suffering etc., shall remain unchanged. Therefore, the

claimants are granted total compensation of Rs.5,75,300/- under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of dependency	Rs.76,800/-	Rs.4,53,600/-
02.	Loss of estate	Rs. 2,500/-	Rs. 2,500/-
03.	Shock, pain and agony	Rs. 5,000/-	Rs. 5,000/-
04.	Funeral expenses	Rs. 4,200/-	Rs. 4,200/-
05.	Conventional Head	Nil	Rs. 30,000/-
	Filial	Nil	Rs. 80,000/-
Total		Rs.88,500/-	Rs.5,75,300/-

12. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.88,500/- to Rs.5,75,300/- (Rupees Five Lakhs Seventy Five Thousand and Three Hundred only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellants/claimants are directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the entire amount. No costs.

13. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 28.08.2019
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