THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1529 OF 2006

JUDGMENT:

This appeal is filed by the appellants/claimants 1 & 2 aggrieved by the Order and Decree dated 31.03.2006 passed in O.P.No.1175 of 2003 by the Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, at Hyderabad (for short, the Tribunal).

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 petitioners 1 & 2 are the parents and petitioners 3 & 4 are the sisters of the deceased-Sunil Kumar. On 19.02.2003 while the deceased along with his friend Adarsh Karan were going from Banjara Hills on their Suzuki bearing No.AP 138081 and reached Secretariat fly over bridge, a lorry bearing No.AP 11V 5648 came in rash and negligent manner with high speed and dashed their vehicle from behind, due to which they sustained grievous injuries and immediately they were shifted to Mediciti Hospital. While undergoing treatment the deceased succumbed to injuries on 20.02.2003. The petitioners also incurred Rs.1,50,000/- for treatment. Prior

to the accident, the deceased was aged about 19 years and running a sweet house and earning Rs.10,000/- per month. Due to the sudden demise of the deceased, the petitioners became destitute. Hence, the petitioners filed the claim petition claiming compensation of Rs.9,00,000/- with costs and interest @ 18% per annum from the date of accident till the date of realization, payable by both the respondents, being the owner and insurer of the offending lorry.

4. Before the Tribunal, 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.

5. After considering the oral evidence of P.W.1 & 2 and the documentary evidence of Exs.A-1 to A-8 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.2,73,503/-, with interest @ 6% per annum from the date of petition till the date of realization, i.e., Rs.1,50,000/- towards loss of dependency, Rs.93,503/- towards medical expenses, Rs.15,000/- towards loss of estate, Rs.5,000/- towards transportation and funeral expenses and Rs.10,000/- towards loss of love and affection. Dissatisfied

with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard Sri J.Pramod Goud, learned counsel appearing for the appellants and Sri G.S.Prakash Rao, learned standing counsel appearing for the 2nd respondent/insurance company.

7. Sri J.Pramod Goud, learned counsel for the appellants, submitted that though P.W.1, who is the father of the deceased, deposed that the deceased, who is his son, was aged about 19 years and was running sweet shop and earning Rs.10,000/- per month, the Tribunal erroneously disbelieved the same and fixed the notional income of the deceased at Rs.15,000/- per annum, which is very low. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]. 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**[2], the appellants, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of loss of filial consortium.

---

[1] 2017(6) ALD 170 (SC)
[2] 2018 LawSuit (SC) 904

8. Sri G.S.Prakash Rao, learned standing counsel appearing for the 2nd respondent/insurance company, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

9. In view of the settled law laid down by the Apex Court on different issues in several decisions, the entire compensation needs to be re-determined. With regard to proof of income, the appellants have filed Ex.A-4-Income Tax return form for the assessment year 2002-03 and Ex.A-6-Income Tax return for the assessment year 2001-02, the deceased paid income tax of Rs.70,080/- for the year 2001-02 and Rs.71,774/- for the year 2002-03. Therefore, this Court feels that it would be just and proper if an amount of Rs.70,000/- is taken into consideration as notional annual income of the deceased as per IT returns. 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.98,000/- (Rs.70,000/- + Rs.28,000/- (40%)), and after deduction of 50% towards personal expenses of the deceased since the deceased was unmarried at the time of the accident, the net annual income of the deceased comes to Rs.49,000/- (Rs.98,000/- - Rs.49,000/- (50%)). The Tribunal has considered the age of the deceased as 19 years, but as per the version of the

appellants, the deceased was aged about 21 years, but as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[3]**,** the appropriate multiplier for the age group of 15 to 25 years is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.8,82,000/- (Rs.49,000/- X 18). The amount of Rs.93,503/- awarded by the Tribunal under the head of medical expenses remains un-changed. The appellants are also entitled to Rs.30,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru Ram**'s case (supra), a sum of Rs.40,000/- each is granted to the appellants, who are parents of the deceased, under the head of loss of filial consortium. Therefore, the total compensation comes to Rs.10,85,503/- (Rs.8,82,000/- + Rs.93,503/- + Rs.30,000 + Rs.80,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,73,503/- to Rs.10,85,503/- payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the appellants claimed only Rs.9,00,000/-, 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

[3] (2009) 6 SCC 121

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: 28th October, 2019

KL