

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.325 of 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 03-11-2007 passed in O.P.No.1879 of 2005 by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad.

2. Brief facts of the case are that on 28-01-2004, the deceased was traveling in the jeep bearing No.AP 22 U 7037 from Marikal village to go to his residence Chedur village as a passenger and when it reached Kistampally and Tangedpally crossing near Marikal village at about 4.00 pm, the driver of the jeep drove the vehicle in a rash and negligent manner, due to which the deceased fell down from the jeep and sustained grievous injuries and died. Hence, the appellants-claimants filed the O.P. claiming compensation of Rs.5,00,000/- against respondent Nos.1 and 2, the owner and the insurer of the crime vehicle, respectively, for the death of the deceased in the said accident.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed 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 respondent No.1 and awarded total compensation of Rs.4,52,000/- i.e., Rs.4,32,000/- (24000 x 18) towards loss of dependency, Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses.

5. Heard.

6. Learned counsel for the appellants contends that the compensation awarded by the Tribunal is meager and that the income of the deceased can be taken as Rs.6,000/- per month instead of Rs.3,000/-.

7. Learned counsel for the 2nd respondent-insurer contends that the compensation awarded by the Tribunal is highly excessive and it cannot be interfered with and further the Tribunal has wrongly taken multiplier as '18' instead of '17' for the age of 30 years. Hence, the appeal is liable to be dismissed.

8. In the facts and circumstances of the case, I am of the considered view that granting of amount of Rs.4,32,000/- towards loss of dependency is not just and proper since for the age of 30 years, the appropriate multiplier is '17' as per the decision of the Supreme Court in **Smt. Sarla Varma Vs. Delhi Transport Corporation**¹. Then the compensation under this head comes to Rs.4,08,000/- (Rs.24,000/- x 17) instead of Rs.4,32,000/-. Further, the Tribunal did not grant any amount for conventional and loss of filial heads. Apart from the same, as per the decision of the Supreme Court in **National Insurance Company Limited**

¹ (2009) 6 S.C.C. 121

Vs. Pranay Sethi², an amount of Rs.70,000/- is awarded to the appellants towards conventional head. Further, since the appellant Nos.2 to 4 being children of the deceased and they are minors, they are entitled for an amount of Rs.1,50,000/- (Rs.50,000/- each for three minor children) as per the decision of the Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram³**. Except the said enhancement, rest of the award remains un-changed. Hence, the total compensation comes to Rs.6,18,000/- as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of dependency	Rs.4,32,000/-	Rs.4,08,000/-
02.	Loss of consortium	Rs.10,000/-	Rs.10,000/-
03.	Funeral expenses	Rs.5,000/-	Rs.5,000/-
04.	Loss of estate	Rs.5,000/-	Rs.5,000/-
05.	Conventional head	-nil-	Rs.70,000/-
06.	Loss of filial	Nil	Rs.1,50,000/-
Total		Rs.4,52,000/-	Rs.6,48,000/-

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,52,000/- to Rs.6,48,000/-. However, appellants have claimed compensation of Rs.5,00,000/- only, they are directed to pay deficit Court Fee for the remaining amount. The appellants are entitled to interest @ 7.5% per annum on enhanced compensation from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v.**

² AIR 2017 (6) 170 (SC)

³ 2018 Law Suit (SC) 904

Rajbir Singh and others⁴. The 2nd respondent is 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 and recover the same from the 1st respondent-owner of the vehicle as per the decision of the Supreme Court in **Shamanna and another Vs. Divisional Manager, Oriental Insurance Company Limited and others⁵.** On such deposit, the appellants are permitted to withdraw the entire amount as apportioned by the Tribunal in its award. No costs.

10. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

JUSTICE T.AMARNATH GOUD

Date: 15-07-2019
kvr

⁴ 2013 ACJ 1403 = 2013 (4) ALT 35

⁵ 2018 ACJ 2163