

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1326 OF 2005

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 22.03.2005 passed in O.P.No.77 of 2004 by the Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge at Karimnagar (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the father and appellant No.2 is the mother of the deceased, Kancherla Bhaskar. The deceased was working as a Driver with respondent No.2 on a tractor bearing No.AP15U 6163. On 15.05.2003, after the tractor was loaded with mud, respondent No.1 drove it and the deceased sat besides respondent No.1. While so, at about 10.30 am., when the tractor reached middle of the tank bund, respondent No.1 observed his father on the tank, and on seeing him, he negligently jumped away leaving the steering of the tractor, due to which, the tractor turned turtle. In the said accident, the deceased sustained grievous injuries and succumbed to injuries on 22.05.2003 while undergoing treatment in MGM Hospital, Wrangal. The claimants filed aforesaid OP claiming compensation of Rs.3,00,000/- against respondent Nos.1 and 2, driver and owner of the lorry, and respondent No.3, insurer of the lorry, for the death of the deceased.

3. Before the Tribunal, the respondents filed separate counters 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 negligence of the deceased and awarded compensation of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 (for short, the Act) with interest @ 9% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri Ramchandrarao Vemuganti, learned counsel for the appellants, submitted that though P.W.2 deposed that at the time of accident, respondent No.1 drove the tractor, the Tribunal erroneously held that he is not a trustworthy witness and came to the conclusion that the accident occurred due to the negligence of the deceased. 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**¹. He further submitted that the appellants, being the father and mother of the

¹ 2017(6) ALD 170 (SC)

deceased, are entitled to Rs.40,000/- each towards filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram²**.

6. Sri Kota Subba Rao, learned counsel for respondent No.3 and Sri V.Ravi Kiran Rao, learned counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. Admittedly, the vehicle was insured with respondent No.3, insurance company, and the policy was in force as on the date of accident. Since the claimants did not prove the negligence on the part of respondent No.1, the Tribunal, only on assumptions and presumptions, has drawn an adverse inference against the appellants and awarded compensation of Rs.50,000/- under Section 140 of the Act. A perusal of the record, I am satisfied that the accident is occurred due to the rash and negligent driving of the driver of the tractor and the appellants are entitled to compensation under Section 163-A of the Act.

8. Coming to the quantum, as the deceased was working as driver, I am inclined to fix his notional income at Rs.3,000/- per month notionally. 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

² 2018 Law Suit (SC) 904

Rs.4,200/- (Rs.3,000/- + Rs.1,200/-), and after deduction of 50%, as the deceased was a bachelor, the annual income comes to Rs.25,200/- (Rs.2,100/- X 12). As the deceased was aged 22 years at the time of accident, the appropriate multiplier is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.4,53,600/- (Rs.25,200/- 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 father and mother of the deceased, are entitled to Rs.80,000/- (Rs.40,000/- each) towards filial consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.5,63,600/- (Rs.4,53,600/- + Rs.30,000/- + Rs.80,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.50,000/- to Rs.5,63,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.3,00,000/-, 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

Date: 28.08.2019
TJMR