

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3650 OF 2005

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 15.09.2005 passed in O.P.No.261 of 2002 by the Motor Accidents Claims Tribunal (I Additional District Judge) at Mahabubnagar (for short, the Tribunal).

2. The brief facts of the case are that the claimants are the parents of the deceased-Praveen Kumar, who was their minor son and studying I class in Shathavahana School, Badepally. On 19.03.2002, after school hours, he was waiting at Signal Gadda in Badepally to board a bus. At 1.00 p.m. or 1.10 p.m., one APSRTC bus bearing No.AP9Z-4431, belonging to Shadnagar depot, came and stopped. Even as passengers were boarding the bus, the deceased boy tried to board the bus, but meanwhile the driver of the bus moved the vehicle without any caution and without observing any precautions. As a result, the deceased boy fell down and the back portion of the bus hit him causing head injury. Immediately one R.Dasarath, who is resident of Macharam Thanda, H/o.Macharam Village in Jadcherla Mandal, shifted the victim boy to Ram Reddy Hospital, Badepally, and from there to the Osmania General Hospital, Hyderabad, and from there to Yashoda Hospital, Hyderabad, and the deceased died in Yashoda Hospital, Hyderabad, finally. Hence, the claimants filed the present claim petition claiming a compensation of Rs.1,00,000/-.

3. Before the Tribunal, the 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.

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 bus, which belongs to the respondent and actually computed the total compensation of Rs.1,50,000/-, but since the claimants have claimed only Rs.1,00,000/- compensation, the Tribunal restricted the same to Rs.1,00,000/-, 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 V.Manohar Rao, learned counsel for the appellants, submitted that though the Tribunal computed the total compensation @ Rs.1,50,000/-, it restricted the same to Rs.1,00,000/-, since the appellants have claimed a compensation of Rs.1,00,000/-. He further submitted that the appellants are also entitled to Rs.30,000/- towards conventional charges, as per the decision of the Hon'ble Supreme Court reported in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹ and in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram**

¹ 2017(6) ALD 170 (SC)

& Others², the appellants, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of loss of filial consortium. Hence, learned counsel prayed to allow the appeal by enhancing the compensation awarded by the Tribunal.

6. Learned counsel for the appellants relied on a decision of this Court reported in **Adam Indur Muttemma and others v. Rathod Reddia and others³**, wherein it is held that the Tribunal/Court is not empowered to award higher compensation than compensation claimed by claimants, accordingly stands overruled.

7. Sri B.Mayur Reddy, learned standing counsel appearing for the respondent, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. In the light of the decision of the Apex Court reported in **Kishan Gopal and another v. Lala and others⁴**, the Apex Court held that it would be just and reasonable to take the notional income at Rs.30,000/- in case of a non-earning member. In the above said decision, the Supreme Court granted compensation in respect of death of 10 years old boy in a motor vehicle accident which took place in the year 1992.

9. In the present case, the deceased was aged 6 years and the accident occurred in the year 2002. In view of the same, by applying the principles laid down in the aforesaid Judgment, it

² 2018 LawSuit (SC) 904

³ 2015 (4) ALD 585 (LB)

⁴ 2013 (6) ALD 59 (SC)

would be just and reasonable to take the notional income of the deceased @ Rs.30,000/-. After deduction of 50% towards personal expenses of the deceased since there are two members in the family of the deceased and he was aged about 6 years at the time of the accident and studying I class, the income of the deceased comes to Rs.15,000/- (Rs.30,000/- - Rs.15,000/- (50%)). Since the age of the deceased was 6 years at the time of the accident, the multiplier applicable for the age of the deceased is '15' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**⁵. Hence, the compensation under the head 'loss of income' comes to Rs.2,25,000/- (Rs.15,000/- x 15). The appellants are also entitled to Rs.30,000/- towards conventional charges, as per the decision of the Hon'ble Supreme Court reported in **Pranay Sethi's** case (supra). In the light of the judgment of the Hon'ble Supreme Court reported in **Nanu Ram's** case (supra), a sum of Rs.40,000/- each is granted to the claimants, who are parents of the deceased, under the head of loss of filial consortium. Therefore, the total compensation comes to Rs.3,35,000/- (Rs.2,25,000/- + Rs.30,000/- + Rs.80,000/- (Rs.40,000/- x 2)).

10. In so far as the enhancement of compensation granted by the Tribunal more than the claim, this Court is of the considered view that in view of the decision of the Apex Court reported in **Nagappa v. Gurudayal Singh and others**⁶, there cannot be any embargo upon restriction restricting the compensation amount

⁵ (2009) 6 SCC 121

⁶ (2003) 2 SCC 274

on par with the claim. In view of the fact that the Motor Vehicles Act is a beneficial legislation as held by the Apex Court in several judgments and on the facts and circumstances of the case, compensation can be granted more than the claim amount.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,00,000/- to Rs.3,35,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.1,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondent is directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from 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: 3rd September, 2019

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