

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2257 OF 2009

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 22.02.2008 passed in O.P.No.642 of 2006 by the Motor Vehicle Accidents Claims Tribunal-cum-V Additional District Judge at Karimnagar (for short, the Tribunal).

2. This matter pertains to the year 2008. Though notices have been served on the respondents as long back as on 22.09.2008, they did not file vakalat. In the circumstances, this Court, on 11.06.2019, directed the office to print the name of National Insurance Company Limited, respondent No.2, in the cause list. Thereafter, though the name of the respondent No.2 was printed in the cause list today, none appeared on its behalf. In the circumstances, since Sri A.Rama Krishna Reddy, learned counsel is appearing for respondent No.2 in other matters, this Court has requested him to argue the matter on behalf of respondent No.2. Sri A.Rama Krishna Reddy, counsel, has consented and argued the matter on behalf of respondent No.2.

3. The brief facts of the case are that appellant No.1 is the wife, appellant No.2 is the daughter, appellant No.3 is the father and appellant No.4 is the mother of the deceased, Chinthala Venkatesh. On 06.02.2006 at about 21.30 hours, while the deceased was returning to home with his younger brother on his motorcycle, and

when they reached Railway Over Bridge, the driver of lorry bearing No.AP16U 6733 drove it in high speed in a rash and negligent manner and dashed the motorcycle. In the said accident, the deceased sustained fatal injuries on his head, and while shifting him to the hospital, he succumbed to injuries. The claimants filed aforesaid OP claiming compensation of Rs.5,00,000/- against respondent Nos.1 and 2, the owner and the insurer of aforesaid lorry, for the death of the deceased.

4. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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.

5. 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 lorry and awarded total compensation of Rs.2,91,500/-, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Sri V.Ramchandar Rao, learned counsel for the appellants, submitted that though the appellants produced Ex.A.6-salary certificate, to show that the deceased was earning Rs.4,050/- per month by working in a bakery, the Tribunal erroneously disbelieved

the same and fixed the income of the deceased at Rs.3,000/- per month, 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, appellant Nos.3 and 4, being the parents of the deceased, are entitled to Rs.40,000/- each and appellant No.2, being the minor child of the deceased, is entitled to Rs.50,000/- under the head of love and affection.

7. Sri A.Rama Krishna Reddy, learned counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. Though the appellants filed Ex.A.6-salary certificate to the effect that the deceased was working in Ramakrishna Bakery and was getting a salary of Rs.4,050/- per month, the Tribunal wrongly did not take it into consideration. In the circumstances of the case, this Court is inclined to take the monthly of the deceased as Rs.4,050/- per month. 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, monthly income of the deceased comes to Rs.5,670/-

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

(Rs.4,050/- + Rs.1,620/-), and after deduction of 1/4th, the annual income comes to Rs.51,036/- (Rs.4,253/- X 12 months). The multiplier for the age of the deceased is '17'. Hence, the compensation under the head 'loss of income' comes to Rs.8,67,612/- (Rs.51,036/- X 17). The appellants are also entitled to Rs.70,000/- 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.50,000/- is granted to appellant No.2 and a sum of Rs.80,000/- (Rs.40,000/- X 2) is granted to appellant Nos.3 and 4. Therefore, the total compensation comes to Rs.10,67,612/- (Rs.8,67,612/- + Rs.70,000/- + Rs.50,000/- + 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.2,91,500/- to Rs.10,67,612/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,00,000/-, 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: 18.06.2019
TJMR