

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.379 OF 2009

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 11.11.2008 passed in O.P.No.1035 of 2007 by the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short, Tribunal).

2. The brief facts of the case are that the deceased-P.Chandra Reddy was hale and healthy, aged about 43 years. He was an auto driver and earning Rs.3,000/- per month. On 04.06.2007 at about 20.30 hours at Manneguda X Road on Nagarjunasagar Road, while the deceased was proceeding in auto, at accident spot, crime lorry bearing No.AP 07T 5779 was stationed in a negligent manner in the middle of road as a result of which auto dashed stationed lorry and the deceased sustained grievous injuries and died. Case was registered against the driver of crime vehicle. The 1st respondent is the owner of the crime vehicle and the 2nd respondent is its insurer and they are liable to pay the compensation. Thus, the appellants/claimants claimed a compensation of Rs.7,00,000/-.

3. Before the Court below, 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.

4. After considering the evidence produced by the parties, the Tribunal actually calculated the compensation at Rs.2,86,000/- i.e., Rs.2,73,120/- towards loss of earnings and Rs.13,000/- towards loss of consortium, but the Tribunal restricted the same to 50% since there was negligence on the part of the driver of the stationed lorry as well as on the part of the deceased. Therefore, the Tribunal granted a compensation of Rs.1,43,000/- with interest @ 7.5% per annum from the date of petition till realization. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. Insofar as the Issue No.1 as to whether the deceased died in the accident on 04.06.2007 due to rash and negligent driving of lorry bearing No.AP 07T 5779 is concerned, the crime vehicle was parked on the High way in the night and there were no parking lights. The said parked crime vehicle was hit by the auto, which was driven by the deceased and during the said accident, the deceased die on the spot. The contributory negligence cannot be made out on the part of the driver of the auto since the issue is not framed to that effect. However, this Court comes to a conclusion that the parking of the crime lorry without taking proper precautions is unjust. In view of the same, the issue of contributory negligence is negated in favour of the claimants.

7. Insofar as the issue No.2 as to whether the claimants are entitled to any compensation and, if so, from whom, is concerned, since there is no income proof, as per the decision reported in **New India Assurance Co. Ltd. v. Kalpana (Smt)**¹, this Court feels just and proper to take the income of the deceased at Rs.4,500/- per month and after deduction of 1/3rd towards personal expenses of the deceased since there are four family members, which comes to Rs.3,000/- (Rs.4,500/- - Rs.1,500/- (1/3)), the annual income comes to Rs.36,000/- (Rs.3,000/- x 12 months). The multiplier for the age of the deceased is '14' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**². Hence, the compensation under the head 'loss of income' comes to Rs.5,04,000/- (Rs.36,000/- x 14). Apart from the same, since the deceased is a married man, the appellants are entitled to Rs.70,000/- towards conventional heads, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³. Therefore, the total compensation comes to Rs.5,74,000/- (Rs.5,04,000/- + Rs.70,000/-). Insofar as the interest is concerned, 7.5% interest shall be computed on the enhanced amount. Except the said modification, the order of the Tribunal remains unchanged.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,43,000/- to Rs.5,74,000/-.

¹ (2007) 3 SCC 538

² (2009) 6 SCC 121

³ 2017(6) ALD 170 (SC)

The enhanced amount shall carry interest @ 7.5% per annum.

No costs.

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

T.AMARNATH GOUD, J

Date: 25th June, 2019

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