HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. No.3813 of 2004

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 20-05-2004 passed in O.P.No.1011 of 1995 by the M.A.C.T. (District Judge), at Nizamabad (for short, 'the Tribunal').

2. Brief facts of the case are that on 03-04-1995 at about 8.30 pm, when the deceased – Donta Satyanarayana, was proceeding on motorcycle bearing No.ATJ-7674 as pillion rider to go to Kisannagar from Armoor and when he reached Balkonda new bus stand, one jeep bearing No.AEK 3813 came from opposite direction at high speed and dashed against his vehicle, due to which, the deceased received multiple and grievous injuries and while shifting him to the hospital, he died. Hence, the claimants who are the wife and son of the deceased filed a claim petition against the respondents, claiming compensation of Rs.2.00 lakhs on the ground that the deceased was running T.V. mechanic shop and earning income of Rs.6,000/- per month.

3. In the claim petition, the 2nd respondents-insurer 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.

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 crime vehicle and therefore, the respondents are liable to pay the compensation. So far as quantum of compensation granted is concerned, the Tribunal granted an amount of Rs.1,60,780/- i.e. Rs.1,58,280/- towards loss of dependency; and Rs.2,500/- towards funeral expenses. Accordingly, it partly allowed the claim petition by granting compensation of Rs.1,60,780/- with interest at 7.5% per annum through out.

5. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellants-claimants and Sri Srinivas Rao Vutla, learned Standing Counsel, appearing for the 2nd respondents-insurer.

7. Learned counsel for the appellants-claimants contends that the trial Court erred in granting compensation towards conventional and filial charges. Further the Tribunal ought to have taken the monthly income of the deceased @ Rs.6000/- per month as he was a T.V. mechanic instead of taking Rs.1500/- per month; that the Tribunal also ignored in granting 40% future prospects as the claimant is aged about 20 years only at the time of accident as held by

the Apex Court in **National Insurance Co. Ltd. v. Prinay Sethi**[1]**;** that as per the decision of the Supreme court in **Smt. Sarla Varma v. Delhi Transport Corporation**[2]**,** at the age of 20, the appropriate multiplier is '18' instead of '16' applied by the trial Court; that since the deceased was a bachelor, the claimants are also entitled to be granted compensation of Rs.70,000/- towards conventional head as per the decision of the Supreme Court in **Pranay Sethi** (1 supra)**;** that being parents of the deceased, the claimants are also entitled to be granted compensation of Rs.50,000/- towards loss of filial as per the decision of the Supreme Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram**[3]**;** and therefore, he prayed to enhance the compensation as the claimants are entitled to the same.

8. Sri Srinivas Vutla, learned counsel appearing for 2nd respondent, contends that since the deceased is not a third party; that it is an act policy but not comprehensive policy; and that as the charge sheet is filed against the driver of the crime vehicle only, the insurer is not liable for payment of compensation. Therefore, he prayed to dismiss the appeal.

9. As seen from the record, as per the evidence of P.W.1, the deceased was a T.V. Mechanic, earning Rs.6,000/- per month and was aged about 20 years at the time of accident. But in support of

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[1] 2017 (6) 170 (SC)
[2] (2009) 6 S.C.C. 121
[3] 2018 Law Suit (SC) 904

proof of income, he has not placed any material before the Tribunal. However, notional income is to be considered. Therefore considering his nature of profession, and as per the decision of the Supreme Court in **Syed Sadiq and others v. United India Insurance Com. Ltd.**[4] wherein, the Supreme Court has taken monthly income of the vegetable vendor @ Rs.6,500/- per month, taking his monthly income @ Rs.6,000/- per month is just and reasonable. Then his annual income comes to Rs.72,000/-. In addition to that, if an amount of Rs.28,800/- i.e. 40% future prospects is added, it comes to Rs.1,00,800/-. After deducting personal expenses i.e. @ 1/3rd as there are two claimants, it comes to Rs.67,200/- per annum. Further, as the appropriate multiplier is '18' instead of '13.19' as applied by the trial Court, the total compensation under the head of loss of income comes to Rs.12,09,600/- (67,200 (x) 18).

10. Further, the appellants/claimants are also entitled to an amount Rs.70,000/- towards conventional head as per **Pranay Sethi** (1 supra) and Rs.50,000/- towards filial charges as per **Magma General Insurance Co. Ltd.,** (3 supra).

11. Insofar, fastening of the liability is concerned, this Court feels that P.W.2, who is happened to be eye witness, is very crucial and according to him, the motorcycle came in the opposite direction to the jeep in a rash and negligent manner and also the jeep was also on its wheels in a rash and negligent manner and accordingly, the

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[4] (2014) 2 S.C.C. 735

accident has occurred. Further, the 1st respondent, who is the owner of the vehicle, got insured the vehicle with the 2nd respondent and the vehicle is covered with the insurance policy of the 2nd respondent even on the date of accident.

12. In view of the same, the liability is fastened on the respondent Nos.2 to 4 jointly and severally. Since P.W.2 has categorically stated that both vehicles were in rash and negligent manner, the apportioning of liability can be fixed as jointly and severally i.e. 50% liability is fastened on the 2nd respondent-insurer and 50% is liability is fastened on the respondent Nos.3 and 4 jointly and severally.

13. Except the above modification, the compensation awarded by the Tribunal under other additional heads viz., funeral and loss of estate shall remain unchanged. Therefore, the claimants are granted total compensation of Rs.13,32,100/- under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of Dependency	Rs.1,58,280/-	Rs.12,09,600/-
02.	Funeral	Rs. 2,500/-	Rs. 2,500/-
03.	Conventional	Nil	Rs. 70,000/-
04.	Filial charges	Nil	Rs. 50,000/-
Total		Rs.1,60,780/-	Rs.13,32,100/-

14. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.1,60,780/- to Rs.13,32,100/- (Rupees Thirteen Lakhs Thirty Two Thousand and

One Hundred only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellants/claimants are directed to pay deficit Court Fee. The respondent Nos.2 to 4 are directed to deposit the enhanced amount jointly and severally along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the entire amount. No costs.

15. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 28.08.2019
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