

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.63 OF 2013

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 16.04.2012 passed in O.P.No.29 of 2009 by the II-Additional Chief Judge-cum-Motor Vehicle Accident Claims Tribunal, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant No.2 is the son, appellant No.3 is the daughter and appellant No.4 is the mother of the deceased, Uppari Venkataiah. On 14.10.2008 at about 6.45 PM., while the deceased was travelling as a pillion rider along with one B.Bhoomnaiah on Hero Honda Glamour motorcycle bearing No.AP 29H 6261 from Gajwel towards Toopran within the limits of Yavapur village, a lorry bearing No.RJ11GA 0806 proceeding from Toopran towards Gajwel, came in opposite direction and driven by its driver in a rash and negligent manner and dashed the motorcycle and the deceased died on the spot. A case in Crime No.225 of 2008 was registered in Toopran Police Station for the offence under Sections 304-A and 337 IPC against the driver of the lorry. The claimants filed the above O.P., claiming compensation of Rs.10,00,000/- on account of death of the deceased.

3. Before the Tribunal, Respondent No.1-owner of the lorry, remained *ex parte*. Respondent No.2-insurance company, filed its counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the

claimants is excessive, exorbitant, imaginary and out of proportion and therefore, sought to dismiss the 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 lorry, and awarded a total compensation of Rs.6,10,000/- with interest @ 7.5% per annum. Dissatisfied with the order passed by the Tribunal, the appellants filed the present appeal, seeking enhancement of the compensation.

5. Heard.

6. Sri P.Ramakrishna Reddy, learned counsel appearing for the appellants, submitted that the Tribunal has granted meager amount of Rs.6,10,000/- against the claim of Rs.10,00,000/- towards compensation, which needs to be enhanced. He further submitted that the deceased was doing contract and other construction works in Hyderabad and Ranga Reddy Districts and was earning Rs.20,000/- per month. He further submitted that the appellants are also entitled to addition of 10% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹.

7. Sri P.Rajesh Babu, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and therefore, sought to dismiss the appeal.

¹ 2017(6) ALD 170 (SC)

8. Though P.W.2, wife of the deceased, stated that the deceased was working as a contractor and engaged in agricultural operations and was earning more than Rs.20,000/- per month, the Tribunal took the notional income of the deceased at Rs.6,000/- per month, on its own, which in the opinion of this Court is very meager.

9. In the light of the evidence placed on record i.e., Exs.A6 to A10, this Court *prima facie* convinced that the deceased was working as Mestri-cum-contractor. The photographs filed under Ex.A8 would go to show that the deceased conducted construction works in the village. Exs.A9 and A10 pattadar pass book and bank statement show that the deceased was an agriculturist and earning considerable amount. Considering the said evidence, this Court feels that fixing an amount of Rs.15,000/- per month towards notional income would be just and proper and the same is considered for computation of his income. The appropriate multiplier as per the decision of the Apex Court in **Smt.Sarla Varma's** case (supra), basing on the age of the deceased at 51 years, is '11'. Apart from the same, since the deceased was self employed, the appellants are entitled to addition of 10% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, the monthly income of the deceased comes to Rs.16,500/- (Rs.15,000/- + 10% future prospects) and after deducting 1/4th of the income for his personal expenses, the loss of dependency comes to Rs.16,33,500/- (12,375/- x 12 x 11). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi's**

case (supra). As appellant Nos.2 and 3 are the major children, they are not entitled to any compensation under the head loss of parental consortium. Therefore, the total compensation comes to Rs.17,03,500/- (Rs. 16,33,500/- + Rs.70,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.6,10,000/- to Rs.17,03,500/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. During the pendency of the appeal, appellant No.4, mother of the deceased, died and hence, her share of compensation shall be shared among the other appellants equally. The appellants are directed to pay the deficit Court fee on over and above the amount claimed by them. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 24.12.2019.
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