

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2832 OF 2019

JUDGMENT:

This appeal is filed by the appellant/3rd respondent/insurance company aggrieved by the Order and Decree dated 08.04.2019 passed in M.V.O.P.No.29 of 2016 by the Motor Accident Claims Tribunal-cum-VII Additional District Judge, at Mahabubnagar (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is wife, petitioners 2 & 3 are children and the 4th respondent is the mother of the deceased-S.Sabanna. The 4th respondent is impleaded as per the orders, dated 24.03.2017, passed by the Tribunal in I.A.No.640 of 2016 and respondents 5 & 6 are the legal representatives of the 4th respondent. On 20.08.2014 at about 10.55 a.m., the deceased was proceeding in auto bearing No.AP.22Y/6181 from Gudaballur Village to Wadvat Village, when auto reached near Maganur Village in the limits, near petrol bunk on Raichur-Hyderabad side, meanwhile one lorry bearing No.NL-01G-3766 came from opposite direction in rash and negligent manner, dashed the auto resulting in death of the deceased. Prior to the accident, the deceased was hale and healthy and aged about 35 years and was earning Rs.6,000/-

per month by doing coolie work and contribute the same to the welfare of family. Due to sudden demise of the deceased, the petitioners lost their sole bread winner and also lost love and affection. Hence, the petitioners filed the claim petition claiming compensation of Rs.10,00,000/-, payable by respondents 1 to 3, being the driver, owner and insurer of the offending lorry. Respondents 5 & 6 are the driver and owner of the auto rickshaw No.AP.22Y/6181.

4. Before the Tribunal, respondents 1, 2, 5 & 6 remained *ex parte*. Respondent No.3 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 evidence of P.Ws.1 & 2 and R.W.1 and the documentary evidence of Exs.A-1 & A-2 and Exs.B-1 & B-2, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.8,12,500/- i.e., Rs.7,42,500/- towards loss of life and loss of future earnings of deceased, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by respondents 1 to 3 jointly and severally. Aggrieved by the said order, the appellant/3rd respondent/insurance company filed the present appeal.

6. Heard Sri T.Mahender Rao, learned standing counsel for the appellant/insurance company and Sri P.Girivardhan Reddy, learned counsel for respondents 1 to 3/claimants. Perused the material record.

7. Sri T.Mahender Rao, learned standing counsel for the appellant/insurance company, submitted that the Tribunal erred in calculating the quantum of compensation and in fixing the monthly income of the deceased @ Rs.5,500/- per month. He further contended that since the deceased used to do coolie work at the time of the accident, his monthly has to be taken at Rs.4,500/- as per the judgment rendered by the Supreme Court in **Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited**¹.

8. Sri P.Girivardhan Reddy, learned counsel for respondents 1 to 3/claimants, submitted that the Tribunal has rightly fixed the monthly income of the deceased @ Rs.5,500/-, but respondents 1 to 3/claimants 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**². 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**³, respondents 2 & 3/claimants 2

¹ AIR 2011 Supreme Court 2951

² 2017(6) ALD 170 (SC)

³ 2018 LawSuit (SC) 904

& 3, being the minor children of the deceased, are entitled to Rs.50,000/- each towards loss of love and affection and the 4th respondent, being the mother of the deceased, is entitled to Rs.40,000/- under the head of loss of filial consortium.

9. Admittedly, since the deceased used to work as a coolie, his monthly income has to be fixed @ Rs.4,500/- as per the decision reported in **Ramachandrappa's** case (supra). Therefore, this Court is also inclined to consider the same. Apart from the same, respondents 1 to 3/claimants 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.6,300/- (Rs.4,500/- + Rs.1,800/- (40%)), and after deduction of 1/4th towards personal deductions of the deceased since there are four family members of the deceased, the monthly income of the deceased would come to Rs.4,725/- (Rs.6,300/- - Rs.1,575/- (1/4)). Therefore, the annual income of the deceased comes to Rs.56,700/- (Rs.4,725/- X 12 months). The multiplier for the age of the deceased is '16'. Hence, the compensation under the head of 'loss of income' comes to Rs.9,07,200/- (Rs.56,700/- X 16). The respondents 1 to 3/claimants 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.1,00,000/- (Rs.50,000/- each) is granted to respondents 2 & 3/claimants 2 & 3, who are the minor children of the deceased under the head of loss of love

and affection, and a sum of Rs.40,000/- is also granted to the 4th respondent, who is the mother of the deceased, under the head of loss of consortium. Therefore, the total compensation comes to Rs.11,17,200/- (Rs.9,07,200/- + Rs.70,000/- + Rs.1,00,000/- + Rs.40,000/-). Except the said enhancement, rest of the award remains un-changed.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.8,12,500/- to Rs.11,17,200/-, payable by respondents 1 to 3 jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.10,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are 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 respondents 1 to 3/claimants and the 4th respondent/mother are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit Court fee. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 13th November, 2019

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