HONOURABLE SRI JUSTICE T. AMARNATH GOUD

M.A. C.M.A. No.427 OF 2011

JUDGMENT:

Dissatisfied with the award of Rs.5,26,500/- (Rupees five lakhs twenty six thousand five hundred only) towards compensation as against the claim of Rs.13,00,000/-, laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') read with Rule 455 of the Motor Vehicle Rules, 1989, seeking enhancement of the same, appellants preferred this Civil Miscellaneous Appeal assailing the order and decree, dated 27-08-2010, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional Chief Judge, City Civil Court, Hyderabad.

2. Appellants are claimants in the O.P. before the Tribunal, while respondent Nos.1 and 2, owner and insurer, respectively, of the lorry bearing No.AP-27-U-2112, are respondent Nos.1 and 2, respectively.

3. Appellant No.1 is the wife, appellant Nos.2 to 4 are minor children and appellant Nos.5 and 6 are parents of M. Chandrasekhar, who died in the accident in the instant case.

4. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

5. Facts of the case, in brief, are as under:

(a) on 25-01-2007, while M. Chandrasekhar was proceeding on his motorcycle bearing No.AP-29-L-8493 from Hyderabad to Eliminedu, at about 6-15 p.m., when he reached near Balaji Feeds on Sagar Road, lorry bearing No.AP-27-U-2112 being driven by its driver at high speed and in a rash and negligent manner, coming in the opposite direction, hit the motorcycle of the deceased, as a result, the deceased fell down and died on the spot.

(b) A report was lodged with Vanasthalipuram Police Station and the same was registered as Crime No.55 of 2007 against the driver of the lorry.

(c) The deceased was aged 38 years at the relevant time and by doing kirana business in Eliminedu village, he used to earn Rs.6,000/- per month. Apart from kirana business, through cultivation of his land admeasuring Acs.10.00, the deceased was earning an income of Rs.1,00,000/- per annum. Thus, in all, the deceased was earning Rs.15,000/- per month.

(d) Claiming that the deceased was sole earning member in his family and claimant Nos.1 to 6 who are his wife, children and parents are dependants on him, claimants laid the claim for Rs.13,00,000/- towards compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry that involved in the accident, jointly and severally liable to pay.

6. Before the Tribunal, respondent No.1, owner of lorry that involved in the accident, remained *ex parte* and respondent No.2, insurer of the lorry, filed counter denying the claim of the claimants and contending that the amount claimed is excessive, sought to dismiss the claim petition.

7. During enquiry, claimant No.1, wife of the deceased, besides examining herself as PW.1, also examined PWs.2 to 5 and marked Exs.A-1 to A-12. On behalf of the insurer, RW.1 was examined and marked Exs.B-1 and B-2, insurance policy of the lorry involved in the accident and rough sketch of scene of offence, respectively.

8. The Tribunal, on appreciation of evidence, both oral and documentary, let in by the parties, held that the accident occurred due to rash and negligent driving of the driver of the lorry and the same is not challenged either by the owner or insurer of the lorry. So far as compensation is concerned, treating the deceased as 38 years old based on Exs.A-3 and A-4, certified copies of inquest and post-mortem reports, fixed his income at Rs.4,000/- per month relying on Exs.A-7 and after deducting 1/3rd (Rs.4,000/- x 1/3) therefrom towards his personal expenses, arriving at Rs.2,667/- (Rs.4,000/- - Rs.1,333/-) per month which comes to Rs.32,000/- (Rs.2,667/- x 12) per annum towards his contribution to the family, by applying multiplier '16', assessed loss of dependency at Rs.5,12,000/- besides Rs.10,000/- towards loss of consortium to claimant No.1, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses.

Thus, the Tribunal awarded a total sum of Rs.5,26,500/- towards compensation by apportioning the same among the petitioners with interest at 7.5% per annum from the date of petition till realisation. Dissatisfied with the same, the claimants preferred this appeal seeking enhancement of compensation.

9. Heard Smt. B. Roja Ramani, learned counsel for the claimants (appellants) and Sri Somanchi Venkateswarlu, learned counsel for the insurance company, and perused the material on record.

10. Respondent No.1 is not served with notice. However, since the notice was sent to the address as mentioned in the O.P. before the Tribunal and she remained *ex parte* even before the Tribunal, her absence does not make any consequence since it is an appeal by the claimants seeking enhancement of compensation.

11. Learned counsel for the claimants submits that there are six dependants in the family of the deceased and the deceased was the sole earning member and it cannot be said that with the meager amount of Rs.4,000/- per month, the deceased was running his family of seven persons including himself. He further submits that Ex.A-8 is the certificate issued by the Gram Panchayat indicating that there is agricultural land in the name of the deceased and photostat copies of pattedar passbooks are also filed to show that the deceased has agricultural lands and thus, he also has income from agriculture.

He further submits that from Ex.A-11, which is the certificate issued by Sri Sai Samrat Transport, it is evident that the deceased along with his brother viz., M.Suresh Kumar has purchased DCM van bearing No.AP 29T 6142 and hired the same to P.W.5 - C.Sridhar, who is said to be doing transport business under the name and style of 'Sri Sai Samrat Mini Transport' at Seethaphalmandi, Secunderabad, on monthly rental basis and, therefore, the claimants have prayed to enhance the monthly income of the deceased from Rs.4,000/- to a reasonable sum.

(a) Learned counsel further submits that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram**[1], claimant Nos.5 and 6, being parents of the deceased, are entitled to Rs.40,000/- each towards filial consortium, and claimant Nos.2 to 4, being minor children of the deceased, are entitled to Rs.50,000/- each towards love and affection, and as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi**[2]**,** claimants are entitled to additional income of 40% towards future prospects since the deceased was self-employed and 38 years old at the relevant time. Further, since there are more than six dependants on the deceased, deduction of 1/4th has to be taken into consideration towards personal expenses and the claimants are also entitled to Rs.70,000/- towards conventional sum as per the decision in **Pranay Sethi's Case**

[1] 2018 LawSuit (SC) 904
[2] 2017(6) ALD 170 (SC)

(Supra 2). Hence, just and proper compensation may be awarded to the claimants.

12. Learned counsel for the insurer contended that the order passed by the Tribunal is just and proper as the claimants have not placed any material before the Tribunal in proof of income of the deceased either from kirana and transport business or agriculture, and, therefore, the Tribunal rightly taken income of the deceased notionally at Rs.4,000/- per month and the same is just and reasonable.

13. Now the point for consideration is whether there are any grounds for enhancement of compensation?

POINT:

14. So far as age of the deceased is concerned, Exs.A-3 and A-4, which are certified copies of inquest and post-mortem report of the deceased, show that the deceased was 38 years old at the relevant time and there is no dispute about the same. Hence, it is treated that the deceased was 38 years old at the relevant time. Accordingly, appropriate multiplier for the age group of the deceased is '15', but not '16' as fixed by the Tribunal, as per the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation[3].**

15. Coming to personal expenses of the deceased, it is not in dispute that the claimants who are wife, children and parents of the deceased, six in number, are dependants on the deceased.

[3] **[(2009) 6 SCC 121] {SC-DB}**

Hence, personal expenses of the deceased have to be deducted at 1/4th instead of 1/3rd as per the decision in **Sarla Verma's Case** (Supra 3)**.**

16. Coming to monthly income of the deceased, it is not so easy task to maintain a family of seven members with the meagre income of Rs.4,000/- per month. Hence, the amount of Rs.4,000/- fixed by the Tribunal towards monthly income of the deceased is inappropriate and unjustifiable. A reasonable presumption can be drawn where a person has six dependants on him. Exs.A-7 which is licence of kirana business on the name of the deceased proves that the deceased was running a kirana shop and also transport business. In view of the same, this Court is of the view that the deceased was a self-employed and was earning Rs.6,000/- per month by running kirana business as it is the minimum amount to survive a family of six dependants.

17. Thus, when the monthly income of the deceased is taken at Rs.6,000/- per month, on deduction of 1/4th (Rs.6,000/- x 1/4) therefrom towards his personal expenses, his contribution towards his family comes to Rs.4,500/- (Rs.6,000/- - Rs.1,500/-) per month and Rs.54,000/- per annum. Accordingly, when the annual income of the deceased is capitalised with multiplier '15', it works out to Rs.8,10,000/- (Rs.54,000/- x multiplier '15') towards loss of dependency. Further, since the deceased was a self-employee and was below 40 years old at the relevant time, as per the decision of **Sarla Verma's Case** (Supra 3), additional income of 40% has to be added

towards future prospects which comes to Rs.3,24,000/- (Rs.8,10,000/- x 40%).

18. Claimant Nos.2 to 4, who are daughter and sons, respectively, of the deceased, are entitled to Rs.50,000/- each, totalling to Rs.1,50,000/- towards love and affection and claimant Nos.5 and 6, who are parents of the deceased, are entitled to Rs.40,000/- each, totalling to Rs.80,000/- towards filial consortium as per the decision in **Magma General Insurance Company Limited's Case** (Supra 1). The claimants are also entitled to Rs.70,000/- towards conventional sum as per the decision in **Pranay Sethi's Case** (Supra 2).

19. Accordingly, the petitioners are entitled to following amounts towards compensation.

1) Loss of dependency	-	Rs.8,10,000-00
2) Future Prospects (40%)	-	Rs.3,24,000-00
3) Love and affection to claimant Nos.2 to 4 at Rs.50,000/- each	-	Rs.1,50,000-00
4) Loss of filial consortium to claimant Nos.5 and 6 at Rs.40,000/- each	-	Rs. 80,000-00
5) Conventional sum (Loss of estate Rs.15,000/- Loss of consortium to claimant No.1 (wife) Rs.40,000/- Funeral Expenses Rs.15,000/-)	-	Rs. 70,000-00
		Rs.14,34,000-00

20. Thus, the claimants are entitled to a total compensation of Rs.14,34,000/- (Rupees fourteen lakhs thirty four thousand only) as against Rs.5,26,500/- awarded by the Tribunal, and the same is accordingly granted, with interest at 7.5% per annum, on the entire compensation from the date of petition till realisation. The claimants are directed to pay Court fee on the amount granted excess than the claimed amount. The claimants are entitled to enhanced compensation in the same ratio as apportioned by the Tribunal. Respondent Nos.1 and 2 are held jointly and severally liable to pay the compensation awarded. They are directed to deposit the enhanced compensation within a period of two (2) months from the date of receipt of a copy of this order. The point is answered accordingly.

21. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the award under challenge by enhancing the compensation, as indicated above. There shall be no order as to costs.

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

T. AMARNATH GOUD, J

July 18, 2019.

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