THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.210 OF 2009
AND
CROSS OBJECTION (SR) No.21969 OF 2009

COMMON JUDGMENT:

The appeal and the cross objections are arising out of the order dated 03.06.2008 in MVOP.No.1947 of 2005 on the file of the Principal Motor Accidents Claims Tribunal (Principal District Judge) at Warangal (for short, the Tribunal).

2. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

3. The brief facts of the case are that on 19.09.2005 at about 10.30 pm., after attending Hamali work, while the deceased (Kulla Kumarasswamy) and his son were returning to their house on bicycles, and when they reached near Under Bridge, Warangal, an auto bearing No.AP36V 4770 came in opposite direction in a rash and negligent manner and hit against the bicycle of the deceased. In the said accident, the deceased sustained grievous injuries. The deceased was immediately shifted to MGM Hospital, Warangal, where he succumbed to injuries on 20.09.2005. The petitioners filed aforesaid MVOP claiming compensation of Rs.9,10,000/- against respondent No.1, driver of the auto, and respondent Nos.2 and 3, insurer of the auto, for the death of the deceased.

4. Before the Tribunal, respondent No.1 filed counter stating that the auto was validly insured and hence, if any compensation

would be awarded, the same would be paid by respondent No.2. Respondent No.2 filed 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 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 auto and awarded total compensation of Rs.5,76,000/-, with interest @ 7.5% per annum. Challenging the same, the appellant filed the present appeal. Dissatisfied with the quantum of compensation, the claimants filed the cross objection, seeking enhancement of compensation.

6. Smt.Poonam Mishra, learned counsel appearing for Smt.Ramani Jonna, learned Standing Counsel for the appellants/insurance company, submitted that though no income proof is filed by the claimants, the Tribunal fixed the income of the deceased at Rs.3,000/-, which is excessive. She further submitted that the deceased was aged about 39 years and the multiplier applicable to the age of the deceased is ‘15’, but the Tribunal wrongly applied multiplier ‘16’ and sought to reduce the compensation.

7. Sri C.Mohan Prakash, learned counsel for the cross objectors, submitted that though the claimants produced the evidence to show that the deceased was earning Rs.6,750/- per month by

doing Hamali work, the Tribunal erroneously fixed the income of the deceased at Rs.4,000/- per month, which is very low. He further submitted that the cross objectors are entitled to addition of 40% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional heads, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]**.** 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**[2], cross objector Nos.2 and 3, being the children of the deceased, are entitled to Rs.50,000/- each under the head of love and affection.

8. As the deceased was doing Hamali work, I deem it appropriate to fix the income of the deceased at Rs.5,000/- per month. Apart from the same, the cross objectors are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.7,000/- (Rs.5,000/- + Rs.2,000/-), and after deduction of 1/3rd towards personal expenses, the annual income comes to Rs.56,004/- (Rs.4,667/- X 12 months). As the deceased was aged about 39 years, the appropriate multiplier is '15'. Hence, the compensation under the head 'loss of income' comes to Rs.8,40,060/- (Rs.56,004/- X 15). Apart from the same, cross objectors are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru**

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

Ram's case (supra), a sum of Rs.1,00,000/- is granted to cross object Nos.2 and 3. Therefore, the total compensation comes to Rs.10,10,060/- (Rs.8,40,060/- + Rs.70,000/- + Rs.1,00,000/-).

9. In the result, MACMA.No.210 of 2009 is dismissed and Cross Objection (SR) No.21969 of 2009 is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.5,76,000 to Rs.10,10,060/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realisation. The cross objectors are directed to deposit deficit Court fee, as they claimed only Rs.9,10,000/-. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 03.07.2019
TJMR