HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3639 of 2005

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 11-01-2005 passed in O.P.No.651 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-V Additional District Judge, Nizamabad (for short, the Tribunal).

2. Brief facts of the case are that the claimants, who are the legal heirs of the deceased, filed the claim petition against the respondents claiming compensation of Rs.3.00 lakhs for the death of the deceased in the accident took place on 09-04-2002 due to the rash and negligent driving of the driver of the motorcycle bearing No.AP 25 C 5299 when he was crossing the road on foot near Ravi Dhabha at Chinnamallareddy village.

3. In the claim petition, the 2nd respondent-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 on the part of the driver of the crime vehicle. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.1,54,500/- i.e. Rs.1,50,000/-

towards loss of income; Rs.2,000/- towards funeral and Rs.2,500/- towards loss of estate, payable by both the respondents jointly and severally, 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 the learned Standing Counsel for the 2nd respondent-insurer.

7. Learned counsel for the appellants-claimants contends that it is a case of death and at the time of accident, the deceased was aged about 45 years and as there is no proof of income, notional income at the rate of Rs.4,000/- per month can be taken into consideration. He further contends that the claimants are also entitled for compensation towards conventional and filial charges and therefore prayed for fair compensation.

8. Learned Standing Counsel for the respondents-insurer, contends that the Tribunal erred in applying multiplier as 15 instead of 14 for the age of 45 years and prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has taken annual income of the deceased at the rate of Rs.15,000/- per annum as no proof of income is filed by the claimants. In **Ramachandrappa v. Royal Sundaram Alliance Insurance Com.**

Ltd.,[1] wherein, the Apex Court held that even for a 'coolie' the monthly income has to be taken at Rs.4,500/-. Further, in the light of Exs.A-6 and A-7, passbook and title deeds, there is come income earned by the deceased from doing cultivation etc. Hence, as contended by the learned counsel for the appellants, an amount of Rs.4,000/- can be taken as monthly income of the deceased.

10. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi**[2]**,** the claimants are entitled to be granted future prospects at 25%. Then his monthly income comes to Rs.5,000/- i.e. Rs.60,000/- per annum; that considering the three number of dependents of the deceased, 1/3rd towards personal expenditure can be deducted out of the said income, then it comes to Rs.40,000/- per annum. Further, since at the time of accident, the deceased was aged about 45 years, the correct multiplier as per **Sarla Verma and others v. Delhi Transport Corporation and another** [3]**,** is '14' instead of '15' as applied by the Tribunal. Hence, the total loss of income in respect of the contribution towards his family members comes to Rs.5,60,000/- (40000 x 14).

11. Further, The Tribunal granted Rs.2,500/- towards funeral and Rs.2,000/- towards loss of estate. However, compensation granted under this head is to be re-determined since the deceased was a married, the 1st claimant is entitled to be granted compensation of

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[1] (2011) 13 S.C.C. 236
[2] 2017 (6) 170 (SC)
[3] 2009 (4) SCJ 91 = 2009 (6) SCC 121

Rs.70,000/- towards conventional head, which is covered funeral expenses and loss of estate as per the decision of the Supreme Court in **Pranay Sethi** (2 supra). Hence, instead of granting Rs.4,500/- under these heads, an amount of Rs.70,000/- is granted to the claimants.

12. Therefore, the claimants are granted total compensation of Rs.6,30,000/- (i.e. Rs.5,60,000/- (+) Rs.70,000/-).

13. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.1,54,500/- to Rs.6,30,000/- (Rupees Six Lakhs Thirty Thousand 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 respondents are directed to deposit the enhanced amount 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.

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

JUSTICE T.AMARNATH GOUD

Date: 12.11.2019
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