HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2288 of 2006

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 27-02-2006 passed in O.P.No.89 of 2004 by the Motor Vehicle Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Nalgonda (for short, the Tribunal).

2. Brief facts of the case are that on 25-12-2003 at about 10.30 a.m. when the deceased-Koppu Anjamma was traveling in an auto bearing No.AP 24/U 7476 to go to Cherukupalli village and when it reached near Tekumatla bus stage, suddenly, one DCM Van bearing No.AP 28/V 4554 came in opposite direction from Hyderabad side in a rash and negligent manner at high speed and dashed their auto, as a result, the deceased sustained grievous injuries and while shifting to hospital, she died. Hence, the claimants, who are the sons and daughter of the deceased, filed a claim petition against the respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle, claiming compensation of Rs.1.00 lakh for the death of the deceased.

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 only. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.1,48,500/-, but restricted the compensation to Rs.74,250/- on the ground of contributory negligence, with interest at 7.5% per annum through out, payable by both the respondents jointly and severally.

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 49 years as per the postmortem report and he was earning Rs.2,000/- per month as an agricultural *coolie*. He further contends that the Tribunal erred in awarding lesser compensation by taking monthly income at Rs.1,000/- per month only. He further contends that Tribunal also erred in awarding lesser compensation under the additional heads viz., funeral and loss of estate. Therefore, the claimant is entitled for fair compensation.

8. Learned Standing Counsel for the 2nd respondent-insurer contends that the Tribunal awarded compensation in a just and proper manner and he supported the order passed by the Tribunal and prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has taken monthly income of the claimant as Rs.1,000/- per month. Admittedly, there is no dispute with regard to the deceased was working as an agricultural *coolie* and earning some income. Even according to the judgment of the Supreme Court in **Ramchandrappa Vs. Manager, Royal Sundaram Aliance Insurance Co. Ltd.[1],** in case of labourer, minimum wages can be taken as Rs.150/- per day. However, in my considered view, since there is no proof with regard to the income or otherwise produced by the claimants, taking an amount of Rs.2,000/-, at least, per month, as notional income before fixing the loss of income is reasonable. Further, as there are four number of dependents, 1/4th of the income can be deducted towards personal expenses instead of 1/3rd. Then her monthly income comes to Rs.1,500/-.

10. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi[2],** the deceased is entitled to be granted future prospects at 25%. Then her monthly income comes to Rs.1875/- (1500 + 375) per month i.e. Rs.22,500/- per annum; Further, since at the time of accident, the

---

[1] 2011 (6) ALD 75 (SC)
[2] 2017 (6) 170 (SC)

deceased was aged about 49 years, the Tribunal has to take multiplier '13' instead of '12'. Hence, the total loss of income in respect of the contribution towards her family members comes to Rs.2,92,500/- (Rs.22,500 x 13).

11. Further, The Tribunal granted Rs.2,000/- towards funeral which in my considered view is not just and proper and the same may be enhanced to Rs.30,000/- as per the decision of the Supreme Court in **Pranay Sethi** (2 supra).

12. Except the above modification, the compensation of Rs.2,500/- granted under the head of 'loss of estate' shall remain unchanged. Therefore, the claimants are granted total compensation of Rs.3,25,000/-i.e. Rs.2,92,500/- towards loss of income; Rs.30,000/- towards funeral and Rs.2,500/- towards loss of estate.

13. Insofar as finding given by the Tribunal with regard to contributory negligence is concerned, in the light of Ex.A-5 charge sheet, wherein it is stated that the accident occurred due to rash and negligent driving of the driver of the crime vehicle only, the finding of the Tribunal is unjust. Moreover, since the vehicle is covered by the policy, both the respondents shall pay the compensation jointly and severally as held by the Tribunal. Hence, the claimants are entitled to be granted full compensation as already held by this Court.

14. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.74,250/- to

Rs.3,25,000/- (Rupees Three Lakhs and Twenty Five 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.

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

JUSTICE T.AMARNATH GOUD

Date: 30.10.2019
kvr