

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1441 OF 2006

JUDGMENT:

This appeal is filed by the claimants aggrieved by the order and decree dated 05.4.2006 passed in M.V.O.P.No.177 of 2005 on the file of the Motor Accident Claims Tribunal-vum-V Additional District Judge, Warangal (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the husband and appellant No.2 is the son of the deceased and that on 10.10.2004, at about 4.30 pm while the deceased was mixing maize under sunlight for making the same dry, a tractor and trailer bearing registration Nos.AP-36-A-8145 and AP-36-A-8146 respectively, driven by its driver in a rash and negligent manner hit the deceased causing injuries to her and immediately, she was shifted to Jaya Hospital, where it was declared that she already died. Hence, the claimants filed the aforesaid MVOP claiming compensation of Rs.2,00,000/- against respondent Nos.1 and 2-the owners and respondent No.3-the insurer of the offending vehicle.

3. Before the Tribunal, respondent No.2 remained *ex parte*. Respondent No.1-owner of the said tractor filed his counter stating that one Gangam Ravinder Reddy drove the said vehicle without his permission and that the relatives of the deceased also lodged a complaint against the said person; that the tractor was insured with respondent No.3 and as such, respondent No.3 alone is liable to pay the compensation. Respondent No.3-the insurer of the vehicle also filed counter denying the

averments of the claim petition and contended that respondent Nos.1 and 2-the owners of the vehicle violated the terms and conditions of the policy by allowing a person not possessing valid driving licence to drive the vehicle and as such, it is not liable to pay compensation 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 of the driver of the trailer and accordingly, awarded total compensation of Rs.59,500/-, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard learned counsel for the appellants and the learned Standing Counsel for respondent No.3-insurance company and perused the evidence and material on record.

6. Learned counsel for the appellants contended that the Tribunal erred in taking the income of the deceased at Rs.15,000/- per annum and has awarded a meager compensation by applying the multiplier of '5' and prayed to enhance the compensation awarded by the Tribunal. He further contended that the appellants 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 Sethi¹.

¹ 2017(6) ALD 170 (SC)

7. Sri Mohan Krishna, learned Standing Counsel for respondent No.3-insurance company, submitted that the Tribunal passed a well-reasoned order and sought to dismiss the appeal.

8. From the record, it is evident that the appellants produced Ex.A-7-true copy of the pahani in support of their plea that the deceased was doing agriculture and was earning Rs.3,000/- per month. However, the Tribunal has erred in holding the deceased to be a non-earning member. Though as per the judgment of the Hon'ble Supreme Court in *Ramachandrappa v. Royal Sundaram Alliance Insurance Com. Ltd.*², the notional income has to be taken as Rs.4,500/-, in the present case, keeping in view Ex.A-7, this Court is inclined to take the notional income of the deceased at Rs.3,000/- per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects as per the decision of the Hon'ble Supreme Court in *Pranay Sethi* (1 supra). Thus, the monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-). After deducting 1/3rd of Rs.4,200/- towards the personal expenses of the deceased, her annual contribution to the family comes to Rs.33,600/- (Rs.2,800/- X 12 months). Taking the age of the deceased as '48' years at the time of the accident, the multiplier of '13' is applied as per *Smt. Sarla Varma Vs. Delhi Transport Corporation*³. Hence, the compensation under the head 'loss of income' comes to Rs.4,36,800/- (Rs.33,600/- X 13). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional charges as per *Pranay Sethi*

² (2011) 13 S.C.C. 236

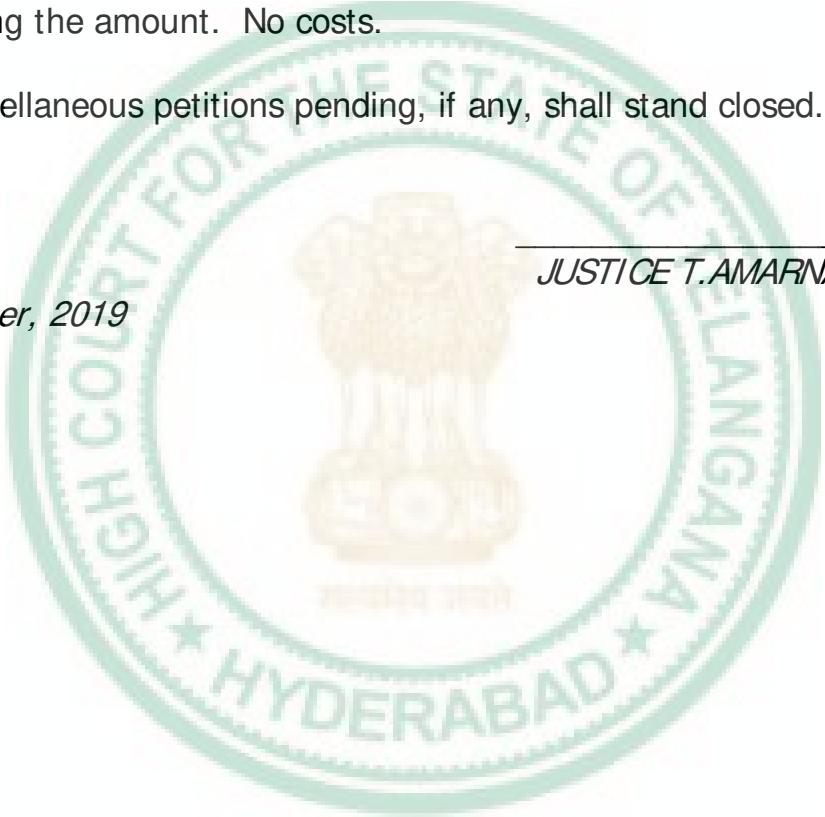
³ 2009 (6) SCC 121

(1 supra). In all, the appellants-claimants are entitled to a total compensation of Rs.5,06,800/- (Rs.4,36,800 + Rs.70,000/-), which is rounded off to Rs.5,07,000/-.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.59,500/- to Rs.5,07,000/-. The enhanced amount shall carry interest @ 7.5% per annum. As the claimants claimed only Rs.2,00,000/- before the Tribunal, they are directed to deposit deficit court fee while withdrawing the amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

24th October, 2019
dr



JUSTICE T.AMARNATH GOUD