**HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

**M.A.C.M.A.No.1946 of 2006**

**JUDGMENT:**

This appeal is filed by the claimants under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the I Additional Motor Accidents Claims Tribunal, Nizamabad (for short 'the Tribunal') in O.P.No.502 of 2001 dated 17.06.2005.

2. For the sake of convenience, the parties herein are referred to as arrayed in the Court below.

3. The brief facts of the case are that on 22.10.2000 at about 11.30 AM while the deceased was proceeding on his bicycle for his daily business from Bheemgal to Armoor side and when he reached near Kummarikunta in Bada Bheemgal village shivar, one lorry bearing No.AP-25-T-6311 came from behind, which was driven by its driver in a rash and negligent manner and dashed the cycle of the deceased, due to which he fell down and received multiple injuries all over the body and he was immediately shifted to Government Hospital, Nizamabad, and thereafter he was shifted to Gandhi Hospital, Secunderabad and on 25.10.2000, he was succumbed to the injuries while undergoing treatment. According to the claimants, the deceased was aged about 35 years and earning Rs.5,000/- per month by doing scrap business.

4. The Tribunal has examined PWs.1 & 2 on behalf of the claimants and marked Exs.A1 to A6 and on behalf of the respondents, RW.1 was examined and Exs.B1 & B2 were marked.

The Tribunal after framing the issues, allowed the claim of the claimants by awarding the claim amount of Rs.5,00,000/-.

5. Aggrieved by the award passed by the Tribunal, the claimants preferred the present appeal with the contentions that the Tribunal has restricted to the claim amount of Rs.5,00,000/- even though it arrived to the amount of Rs.5,95,000/- as just compensation and sought for enhancement of the amount by allowing the appeal.

6. Sri Bhanu Prakash, learned counsel for the insurance company vehemently opposed the maintainability of the appeal under Section 173 of the Act stating that there is no grievance as the claim amount of Rs.5,00,000/- has already been awarded, the question of filing the appeal do not arise and more so, the claimant has not filed any application seeking enhancement before this Court along with the appeal. Further he contended that even in the appeal their claim is only to the extent of Rs.95,000/- which was not awarded by the trial Court and in the absence of any enhancement application, the appeal needs to be dismissed and further contended that the award passed by the trial Court is just and reasonable and the same needs to be confirmed. He also made submissions on applicability of the multiplier and also on the percentage of deductions.

7. With regard to the objections made by the learned counsel for the insurance company as to the maintainability of appeal, the

Apex Court in **Nagappa v Gurudayal Singh**[1] held that the compensation awarded can be more than the claim amount. In order to award just and fair compensation, the Tribunal/High Courts can pass appropriate orders basing on the facts and on the law laid down by the Apex Court time to time and accordingly, the present appeal is taken on record and the same is to be decided in the light of the judgments of the Apex Court.

8. Though the claimants have not filed the proof of occupation of the deceased doing scrap business and earning Rs.5,000/- per month, the trial Court in the absence of which has fixed notional income at Rs.4,500/- per month, which appears to this Court as reasonable. As per Ex.A3, the age of the deceased is 38 years and '15' multiplier is applicable as per **Sarla Varma Vs. Delhi Transport Corporation**[2]. There are 10 dependants and 1/5$^{th}$ has to be deducted towards personal expenses of the deceased from his income. As per the expression in **National Insurance Company Limited Vs. Pranay Sethi**[3], the claimant being self-employed and aged about 38 years, 40% future prospects can be taken into consideration, which comes to Rs.1,800/-, in all claimant monthly income comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). Out of Rs.6,300/-, if 1/5$^{th}$ is deducted towards the personal expenses of the deceased, the net income comes to Rs.5,040/- (Rs.6,300/- (-) Rs.1260/-). The loss of dependency comes to Rs.5,040/- x 12 x 15 = Rs.9,07,200/-. The

[1] 2003(2) SCC 274
[2] 2009 (6) SCC 121
[3] 2017 (6) SCC 170

1st claimant widow of the deceased is entitled for Rs.70,000/- under conventional heads as per **Pranay Sethi** supra and claimant Nos.3 to 10 are minor children of the deceased and they are entitled for Rs.50,000/- each under the head of loss of love and affection as per **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram**[4], which comes to Rs.4,00,000/-. The total compensation to which the claimants are entitled to is Rs.13,77,200/-.

9. Accordingly and in the result, this Appeal is allowed by enhancing the amount awarded by the Tribunal to Rs.13,77,200/- from Rs.5,00,000/-. The enhanced amount shall carry interest at 7.5% per annum from the date of petition till the date of realization. The claimants have to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimants cannot be permitted to execute for the enhanced amount. No costs.

Miscellaneous petitions if any shall stand closed.

**T.AMARNATH GOUD, J**

Date: 06.11.2019
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[4] 2018 Lawsuit (SC) 904