THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2947 OF 2005

JUDGMENT:

This appeal is filed by the appellants/claimants aggrieved by the Order and Decree dated 25.07.2005 passed in O.P.No.249 of 2002 by the Principal Motor Accidents Claims Tribunal at Nalgonda (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is the husband and the 2nd petitioner is the daughter of the deceased-Ramulamma. On 18.09.2000 the deceased along with her co-labourers started from Pulicherla Village in a lorry bearing No.AHH-3263 in order to go to Halia for the purpose of plucking of sweet oranges from a garden. At about 8.00 a.m. after crossing Peddavoora Village, the driver of the lorry drove it in a rash and negligent manner due to which the lorry turned turtle. As a result, the deceased fell down from the lorry and sustained grievous injuries on the vital parts of her body and died on the spot. The accident occurred solely due to the rash and negligent driving of the lorry by its driver. Prior to the accident, the deceased was hale and healthy and was earning Rs.2,000/- per month by doing labour work and contributing the same for the family consisting of herself and the petitioners. Hence, the petitioners filed above OP against respondent Nos.1 and 2, the

owner and the insurer of the lorry, seeking compensation of Rs.1,00,000/- originally, but later it was amended to Rs.2,00,000/- *vide* orders, dated 10.05.2005, passed by the Tribunal in I.A.No.836 of 2005.

4. Before the Tribunal, respondent No.1 remained *ex parte.* Respondent No.2 filed its counter denying the averments of the claim petition and contended that the driver of the lorry was not having valid and effective driving licence to drive the lorry as on the date of the accident; that he was not permitted by the owner of the lorry to drive the lorry; that the deceased was traveling in goods lorry as an unauthorized passenger and 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 lorry and awarded total compensation of Rs.1,16,000/-, with interest @ 9% per annum from the date of petition till the date of realization, fixing the liability against respondent No.1 alone and the claim against the 2nd respondent is dismissed. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal, seeking enhancement of the same.

6. Heard Sri T.Viswarupa Chary, learned counsel appearing for the appellants, and Sri Sriman, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material on record.

7. Sri T.Viswarupa Chary, learned counsel for the appellants submitted that though P.W.1 deposed that the deceased was earning Rs.3,000/- per month by doing labour work, the Tribunal erroneously fixed the annual income of the deceased at Rs.9,000/- and computed the loss of dependency @ Rs.99,000/- only and the same is very low. He further submitted that since the age of the deceased was 55 years at the time of the accident and since there are two dependents and doing labour work at the time of the accident, which is considered as self-employed, 1/3rd deduction towards personal expenses of the deceased has to be made and the appellants are also entitled to addition of 10% 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 Sethi**[1] and multiplier of '11' has to be applied as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[2]. He further submits that the appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). He further submits that with regard to the fastening of the liability on the 1st respondent is concerned, the same needs to be re-considered by this Court in the light of the judgment rendered by the Apex Court in **United India Insurance Co. Ltd. v. K.M. Poonam and others**[3], wherein it is held that the liability of insurance company is

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[1] 2017(6) ALD 170 (SC)
[2] (2009) 6 SCC 121
[3] 2011 ACJ 917

limited to highest six awards and the insurance company directed to pay amount of all the awards to the claimants and recover the amount in excess of its liability form the owner in execution without filing a separate suit. Therefore, he prayed to enhance the compensation awarded by the Tribunal and to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance to the appellants and recover the same from the 1st respondent/owner of the crime vehicle.

8. Sri Sriman, learned Standing Counsel for the 2nd respondent/insurance company, submitted that the Tribunal passed a well reasoned order and that the claimant is not entitled for any enhancement of compensation, as she was a gratuitous passenger and that the amount awarded by the Tribunal is just and proper and needs no enhancement and prayed to dismiss the appeal by confirming the order passed by the Tribunal.

9. In **Poonam's case** (supra), the Apex Court held that even if a larger number of passengers than was permitted under the terms of the insurance policy were being carried in the vehicle, it could not be said that the insurance company would stand exonerated from its liability because the vehicle was insured for third party coverage for unlimited liability and that the carrying a larger number of passengers than was permitted in terms of the insurance policy, did not amount to breach of the terms and conditions of the policy and the insurance company would still

be liable since the vehicle was legally insured. The Apex Court further held that the total amount of compensation payable should be deposited by the insurance company which could be proportionately distributed to all the claimants, who could recover the balance of the compensation amounts awarded to them from the owner of the vehicle and that having regard to the beneficial object of the Motor Vehicles Act, 1988, it would be proper for the insurer to satisfy the award and to recover the amount from the owner, without taking recourse to a separate suit, from the executing court itself.

10. With regard to the quantum of compensation is concerned, though the claim is made for Rs.2,00,000/-, it is a bounden duty of this Court to award just and proper compensation. The Tribunal has erroneously fixed the annual income of the deceased at Rs.9,000/-. Though there is no proof of income, but as per the evidence of P.W.1, the deceased was earning Rs.3,000/- per month by doing labour work. Therefore, this Court is inclined to take the monthly income of the deceased @ Rs.3,000/- per month. Apart from the same, the appellants are entitled to addition of 10% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). Therefore, the monthly income of the deceased comes to Rs.3,300/- (Rs.3,000/- + Rs.300/- (10%)), and after deduction of 1/3rd towards personal expenses of the deceased since there are two family members, the monthly income of the deceased comes to Rs.2,200/- (Rs.3,300/- - Rs.1,100/- (1/3rd))

and the annual income comes to Rs.26,400/- (Rs.2,200/- x 12 months). The multiplier for the age of the deceased is '11' as per the decision reported in **Sarla Verma's case** (supra). Hence, the compensation under the head 'loss of dependency' comes to Rs.2,90,400/- (Rs.26,400/- x 11). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). Therefore, the total compensation comes to Rs.3,60,400/- (Rs.2,90,400/- + Rs.70,000/-). Insofar as the interest is concerned, for the amount awarded by the Tribunal, interest of 9% shall continue and with regard to the enhanced amount, interest of 7.5% shall be computed.

11. With regard to the fixing of liability is concerned, having regard to the submissions made by the learned counsel for the appellants and in view of the decision reported in **Poonam's case** (supra), this Court feels that it would be just and proper to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner of the crime vehicle. Except the said modification, the order of the Tribunal remains unchanged.

12. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,16,000/- to Rs.3,60,400/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.2,00,000/-, they are directed to deposit deficit

Court fee before the Tribunal. The 2nd respondent/insurance company is directed to pay the enhanced compensation amount along with proportionate costs and interest at the first instance and recover the same from the 1st respondent/owner of the crime vehicle. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th September, 2019

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