HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.535 of 2011

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the order and decree dated 16.10.2008 passed by the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), in O.P.No.1286 of 2007.

2. Appellant No.1 is the wife and appellant Nos.2 and 3 are the minor children of the deceased, Ch.Sreenu @ Srinivas.

3. The brief facts of the case are that on 04.4.2007 at about 7.30 pm., near Saleem Timber Depot, Rampally, Keesara Mandal, Ranga Reddy District, while the deceased was proceeding on a two wheeler, a lorry bearing registration No.AP 29T 7158 driven by its driver in a rash and negligent manner came and dashed the deceased, as a result of which, he died. In this connection, a case was registered and the charge sheet was filed. Therefore, the claimants filed the aforesaid OP claiming compensation of Rs.7,00,000/- against respondent Nos.1 and 2, the owner and insurer of the aforesaid lorry, respectively, for the death of the deceased.

4. Before the Tribunal, respondent No.1 remained *ex parte*. The second respondent 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.

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 compensation of Rs.4,38,000/-, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal seeking enhancement of the same.

6. Based on the respective pleadings of the parties, the Tribunal framed the following issues:

> "(1) Whether the deceased died in the accident on 04.4.2007 due to rash and negligent driving of lorry tipper bearing No.AP 29T 7158?
> (2) Whether the petitioners are entitled to any compensation? If so, from whom?
> (3) To what relief?"

7. On behalf of the appellants, P.Ws.1 to 3 were examined and Exs.A-1 to A-11 are marked. On behalf of the respondents, no oral evidence was adduced and Ex.B-1-Copy of insurance policy was marked.

8. While answering issue No.1, the Tribunal, on the strength of evidence of P.W-1 and Exs.A-1 and A-2, has categorically held that the accident occurred due to the rash and negligent driving of the driver of the offending lorry, resulting in the death of the deceased.

9. Insofar as issue No.2 is concerned, the Tribunal has taken the earnings of the deceased, who happened to be a Carpenter by occupation, as Rs.100/- per day, which comes to Rs.3,000/- per month and taking the age of the deceased as 26 years, applied the

multiplier of '17.66' and deducted 1/3rd of his earnings towards his personal expenses. Thus, the Tribunal awarded a sum of Rs.4,23,000/- towards loss of earnings and Rs.15,000/- towards loss of consortium, totalling to Rs.4,38,000/-. The Tribunal directed that respondent Nos.1 and 2 are jointly and severally liable to pay the said compensation of Rs.4,38,000/- with interest @ 7.5% per annum from the date of the petition till the date of realization.

10. Heard Sri P.Rama Krishna Reddy, learned counsel for the appellants, and Sri B.Vivekananda, learned counsel representing Sri B.Narayana Reddy, learned counsel for respondent No.2-insurance company.

11. Learned counsel for the appellants submitted that the evidence of P.Ws.1 and 3 and Ex.A-7-salary certificate indicate that the monthly salary of the deceased was Rs.7,500/- as a skilled Carpenter and was also getting Rs.2,000/- towards Over Time charges and used to draw Rs.9,500/- per month and that in the light of the ratio laid down by the Apex Court under the Motor Vehicles Act, 1988, the claimants are entitled for enhancement of compensation.

12. Sri B.Vivekananda, learned counsel representing Sri B.Narayana Reddy, learned counsel for respondent No.2-insurance company, contended that originally in the O.P., the claimants indicated the monthly income of the deceased as a Carpenter as Rs.6,000/- and thereafter, they changed their version

as an after thought stating that his salary was Rs.7,500/- and Over Time earnings was Rs.2,000/- per month which cannot be relied on and the Tribunal has rightly took the notional amount of Rs.100/- per day, which comes to Rs.3,000/- per month.

13. In support of his argument, the learned counsel for the appellants relied on the decision in *Neeta and Others Vs. Divisional Manager, Maharashtra State Road Transport Corporation*[1], wherein the Apex Court has enhanced the awarded amount of Rs.7,68,000/- by the Tribunal, which has been re-determined by the High Court at Rs.9,09,000/-, and awarded Rs.21,53,000/- taking into consideration the income of a Carpenter as Rs.12,000/- per month. The Apex Court in the said judgment has categorically observed that the evidence on record remained unchallenged by the respondent Corporation and there is no rebuttal evidence adduced by the respondent disputing the claim of the appellants.

14. Applying the same principle, in the present case also, respondent No.2-insurance company has not adduced any evidence rebutting the claim of the appellants-claimants and more over, no contradictions were elicited from the cross-examination of P.Ws.1 to 3.

15. In the light of the above, this Court is of the considered view that taking the earnings of the deceased Rs.7,500/- per month is reasonable since the deceased was a skilled Carpenter.

[1] 2015 ACJ 598

16. As the age of the deceased was 26 years, the appropriate multiplier as per the decision of the Hon'ble Supreme Court in Smt.Sarla Varma Vs. Delhi Transport Corporation[2] is '17, but the Tribunal wrongly took the multiplier of '17.66'. As he had five dependents, 1/4th of Rs.7,500/- has to be deducted towards his personal expenses.

17. 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 Sethi[3]. Thus, taking the monthly income of the deceased as Rs.7,500/- (Rs.7,500/- + Rs.3,000/-) and after deducting 1/4th from it, the annual income comes to Rs.94,500/- (Rs.7,875/- X 12 months). By applying the appropriate multiplier of '17', the compensation under the head 'loss of income' comes to Rs.16,06,500/- (Rs.94,500/- X 17).

18. As per **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**[4], appellant Nos.2 and 3 being minor children of the deceased are entitled to Rs.50,000/- each towards loss of love and affection. Apart from the same, appellant No.1 is entitled to Rs.70,000/- towards conventional charges as per *Pranay Sethi*'s case (3 supra). In all, the appellants-claimants are entitled to a total compensation of Rs.17,76,500/- (Rs.16,06,500/- + Rs.1,00,000/- + Rs.70,000/-).

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[2] 2009 (6) SCC 121
[3] 2017(6) ALD 170 (SC)
[4] 2018 LawSuit (SC) 904

19. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.4,38,000/- to Rs.17,76,500/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of the petition till the date of realisation. The claimants shall pay the deficit Court fee on the enhanced compensation.

Pending Miscellaneous Petitions, if any, shall stand disposed of. No order as to costs.

JUSTICE T.AMARNATH GOUD

01st August, 2019
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