

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2211 OF 2009

JUDGMENT:

Aggrieved by the order and decree, dated 18.07.2007, passed by the Chairman, III Motor Accidents Claims Tribunal, Warangal (for short, 'the Tribunal') in M.V.O.P.No.84 of 2005, the appellants preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act') seeking enhancement of the compensation.

2. The appellants herein are the petitioners and respondent Nos.1 to 3, who are driver, owner and insurer of Tractor and Trailer bearing Nos.AP-36-T-2815/2816 are the respondents in the aforesaid O.P.

3. For the sake of convenience, the parties herein are referred to as they are arrayed before the Court below.

4. Brief facts that led to filing of the claim petition are that the 1st petitioner is wife, 2nd petitioner is son, 3rd petitioner is daughter and 4th and 5th petitioners are parents of the deceased Chander Babu (hereinafter referred to 'as the deceased'). The deceased is working as Government Teacher and earning Rs.9,267/- per month. On 20.02.2004, after attending the school at URN Thanda, H/o Pallarguda Village, at about 4:00 PM, the deceased along with P.W.2, who was his colleague, boarded auto bearing No.AP-36-U-9766 at Upparapally and when the said auto reached Kotagandi Village, at that time, the Tractor and Trailer bearing Nos.AP-36-T-2815/2816, belonging to the 2nd respondent, which was insured with the 3rd respondent, driven by its driver, came at high speed in a rash and negligent manner from opposite

side and hit the auto, due to which the deceased received severe injuries and died instantaneously and, therefore, requested the Tribunal to grant an amount of Rs.14,00,000/- as compensation against respondent Nos.1 to 3, who are driver, owner and insurer of the tractor and trailer.

5. Respondent Nos.1 and 2, who are driver and owner and of tractor and trailer remained *ex parte* before the Tribunal.

6. Respondent No.3 - Insurer of the vehicle filed counter denying the manner in which the accident had occurred; that the accident might have occurred due to contributory negligence; that the petitioners did not make the owner and insurer of the auto as necessary parties; that claim amount is excessive and finally requested to dismiss the claim petition.

7. The Court below framed three issues for trial. During enquiry PWs.1 to 3 were examined and got marked Exs.A.1 to A.9 on behalf of the petitioners. On behalf of the respondents, no oral or documentary evidence was adduced.

8. After hearing both sides and analyzing the entire evidence on record, the Court below gave a finding that the accident had occurred due to rash and negligent driving of driver of the Tractor and Trailer and awarded a sum of Rs.5,75,000/- as compensation with interest at the rate of 7.5% per annum thereon from the date of petition till realization.

9. Dissatisfied with the quantum of amount awarded by the Court below, the petitioners preferred the present appeal.

10. Heard Sri M.Madhava Reddy, learned counsel for the petitioners - appellants and Sri T.Ramulu, learned Standing Counsel for respondent No.3 - Insurer.

11. Learned counsel for the appellants would submit that since there are five dependents on the deceased, the Tribunal ought to have taken $\frac{1}{4}$ th instead of $\frac{1}{3}$ rd towards personal expenses of the deceased; that the Tribunal has not awarded future prospects and that the compensation awarded by the Tribunal is very meagre; that the Tribunal ought to have taken '14' multiplier instead of '15', as the deceased is aged about 42 years and, therefore, requested to award the compensation as claimed by the appellants.

12. On the other hand, learned Standing Counsel for respondent No.3 - Insurer would submit that there is no infirmity in the order passed by the Court below as the Court below has gone through the entire evidence on record; that the Court below has dealt with each and every head and arrived at the sums to which the appellants were entitled, as such, requested to dismiss the appeal.

13. As seen from the Award passed by the Tribunal, the Tribunal has taken the monthly income of the deceased at Rs.9,200/-. After death of the deceased, P.W.1, who is wife of the deceased, got compassionate appointment as Typist in P.W.D Department and drawing salary of Rs.4,942/- per month. The Tribunal had deducted $\frac{1}{3}$ rd towards personal expenses of the deceased so also P.W.1 from their respective salaries and also after deducting the salary of P.W.1 from the salary of the deceased, calculated the loss of contribution to the family, which

comes to Rs.5,40,000/-. The Tribunal also awarded an amount of Rs.15,000/- towards consortium to the 1st appellant, Rs.15,000/- towards loss of love and affection and estate and Rs.5,000/- towards funeral and transport expenses. Thus in all awarded an amount of Rs.5,75,000/-.

14. There is no dispute that the deceased is a Government employee and Ex.A.3 salary certificate is also filed before the Tribunal showing that he was getting Rs.9,267/-. After deducting standard deductions, the net salary comes to Rs.9,200/-. The Tribunal has rightly taken the monthly income of the deceased at Rs.9,200/-. Further, at the time of accident the deceased was aged about 42 years. As per **Sarla Verma and others v. Delhi Transport Corporation and Another**¹, the relevant multiplier for the age of 41 to 45 years is '14' instead of '15' as taken by the Tribunal. Apart from the same, the appellants are entitled to addition of 30% towards future prospects, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi**². Therefore, the monthly income of the deceased comes to Rs.11,960/- (Rs.9,200/- + Rs.2,760/-), and after deducting 1/4th therefrom towards personal expenses, since dependents are five in number, it comes to Rs.8,970/- (Rs.11,960/- (-) 2,990 (1/4)). P.W.1, who is wife of the deceased has got compassionate appointment and is working as Typist earning Rs.4,942/-per month. After deducting 1/3rd towards her personal expenses, the balance amount comes to Rs.3,200/- per month. The Tribunal deducted 1/3rd from the respective salaries of the deceased as well as P.W.1. But, in view of ratio laid down in **Sarla Verma's case**,

¹ (2009) 6 SCC 121

² 2017(6) ALD 170 (SC)

since dependents are more than three (3) in number, 1/4th has to be deducted towards personal expenses for calculating the loss of earnings. Then the loss of earnings can be arrived at Rs.5,770/-. Hence, the loss of earnings comes to Rs.9,57,600/- (Rs. 5,770/-x 12 x 14). Apart from the same, the appellants are also entitled to Rs.70,000/- under conventional heads, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). The Tribunal awarded an amount of Rs.15,000/- towards love and affection, which needs no interference by this Court. Thus, in all the appellants are entitled to total compensation of Rs.10,42,600/-.

15. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.5,75,000/- to Rs.10,42,600/-. The enhanced amount shall carry interest @ 7.5% per annum. The respondents are directed to deposit the enhanced amount along with interest within two (2) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

AUGUST 06, 2019
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T. AMARNATH GOUD, J

HON'BLE SRI JUSTICE T.AMARNATH GOUD



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Date:06.08.2019

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