THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2240 OF 2009

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 24.01.2008 passed in O.P.No.744 of 2006 by the Court of VII Additional District Judge at Mahabubnagar (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the daughter and appellant No.2 is the son of the deceased, Yashoda Bai. On 13.09.2006, while the deceased was proceeding to her village from Nagarkurnool in a jeep bearing No.AP21V 9124, in the limits of Gaggalapally Village, the driver of the DCM van bearing No.AP26U 2898 drove it in high speed in a rash and negligent manner and hit the jeep. In the said accident, the deceased died on the spot. The claimants filed aforesaid OP claiming compensation of Rs.5,00,000/- against respondent Nos.1 and 2, the owner and the insurer of aforesaid DCM van, for the death of the deceased.

3. 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 amount claimed is excessive 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 DCM van and awarded total compensation of Rs.1,72,500/-, 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.

6. Sri T.Damodar, learned counsel for the appellants, submitted that though the appellants produced the evidence to show that the deceased was earning Rs.8,000/- per month by doing kirana business, the Tribunal erroneously fixed the income of the deceased at Rs.18,000/- per annum, which is very low. He further submitted that the appellants are also entitled to addition of 25% 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].**

7. Sri K.V.Subba Reddy, learned counsel appearing on behalf of Sri K.Sita Ram, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. A perusal of the order of the Tribunal, it is elicited that as the appellants did not file any documentary proof to show that the deceased was earning a sum of Rs.8,000/- per month, the

[1] 2017(6) ALD 170 (SC)

Tribunal, as a guess work, had taken notional income of the deceased as Rs.18,000/- per annum. But, the Tribunal erred in not considering Ex.A-9, business licence of the deceased, which shows that the deceased was running a kirana shop and milk vending business. The shop is situated on the main road of Thodoor Village and Mandal. As the shop is situated in the mandal headquarter, obviously the income coming from the business would be more. Therefore, this Court feels that it is reasonable to fix the income of the deceased at Rs.4,000/- per month. It is to be noted that the age of the deceased was 45 and the appropriate multiplier as per the decision of the Hon'ble Supreme Court in **Smt.Sarla Varma v Delhi Transport Corporation**[2] is '14', but the Tribunal wrongly took the multiplier '15' and the same needs to be interfered.

9. In view of the above, the income of the deceased is fixed at Rs.4,000/- per annum. Apart from the same, the appellants are entitled to addition of 25% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, monthly income of the deceased comes to Rs.5,000/- (Rs.4,000/- + Rs.1,000/-), and after deduction of 1/3rd, the annual income comes to Rs.39,996/- (Rs.3,333/- X 12 months). The multiplier for the age of the deceased is '14'. Hence, the compensation under the head 'loss of income' comes to

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[2] 2009(6) SCC 121

Rs.5,59,944/- (Rs.39,996/- X 14). Apart from the same, as the deceased is widow, the appellants are entitled to Rs.15,000/- towards funeral expenses, as per **Pranay Sethi**'s case (supra). Therefore, the total compensation comes to Rs.5,74,944/- (Rs.5,59,944 + Rs.15,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,72,500/- to Rs.5,74,944/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 18.06.2019
TJMR