

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1491 OF 2010

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 31.05.2010 passed in O.P.No.74 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sanga Reddy (for short, the Tribunal).

2. The brief facts of the case are that the appellants are the parents of the deceased-Ippa Kurumurthi. On 31.12.2006 at noon time the deceased Kurumurthi, his father and other labourers, after completion of labour work, went to Yellamma temple at Patancheru in a tractor and trailer bearing No.AP 15U 4420 & 4421 and while they were returning to Bhanur Village at about 7.30 p.m., when they reached Bhanur Shivar, the driver of the tractor and trailer drove it in a rash and negligent manner, due to which the deceased fell down, received injuries and the tractor ran over his head, causing his instantaneous death on the spot. The deceased was hale and healthy at the time of accident and he was working in Lahari Resorts as a labourer and earning Rs.6,000/- per month and contributing all his earnings to his family. Due to the sudden and untimely death of the deceased, the appellants suffered much mental pain and agony. The 1st respondent is the owner of the tractor and trailer and the 2nd respondent is its insurer. Hence, the appellants filed the present claim petition claiming a compensation of Rs.4,00,000/-.

3. Before the Tribunal, the respondents filed separate counters 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 offending tractor and trailer and awarded total compensation of Rs.2,70,000/- 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 Ms.Shalini Saxena, learned counsel appearing for the appellants and Mr.A.Rama Krishna Reddy, learned standing counsel appearing for the 2nd respondent/insurance company.

6. Ms. Shalini Saxena, learned counsel appearing for the appellants, submitted that the deceased was working as a labourer in Lahari Resorts and earning Rs.6,000/- per month, but the Tribunal erroneously disbelieved the same and fixed the income of the deceased at Rs.3,000/- per month, which is very low. She further submitted that 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**¹ and the appellants are also entitled to addition of conventional heads

¹ 2017(6) ALD 170 (SC)

as per the decision reported in **Pranay Sethi's case** (1 supra). She further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**², the appellants, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of love and affection. She further submitted that the Tribunal has also applied a wrong multiplier, but as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**³, the multiplier to be applied for the age of the deceased, which was 20 years at the time of the accident, is '18'.

7. Sri A.Rama Krishna Reddy, learned standing counsel appearing for the 2nd respondent/insurance company, submitted that the appellants are not entitled for any relief as the deceased was not an employee on the tractor and it was not during the course of the employment the accident has taken place and that he was traveling on the tractor as a gratuitous passenger and visited the Yellamma Temple at Patancheru and thereafter the accident has taken place. He further submitted that when the deceased was traveling on an agricultural goods vehicle, such traveling becomes unauthorized and is not permissible. He further submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

² 2018 LawSuit (SC) 904

³ (2009) 6 SCC 121

8. Having regard to the rival submissions made by both the parties, it cannot be ignored that as per the evidence of P.W.2, who is an eye witness to the accident, after completing the labour work, the deceased along with his father and other labourer went to Yellamma Temple, which is situated at Patancheru, in the offending tractor and trailer and while they were returning to Bhanur at about 7.30 p.m., when they reached Bhanur shivar, the deceased fell down from the tractor and when he was lying on the road, the tractor went over his body and as a result the deceased received head injury and died on the spot. Thus, the deceased has to be treated as a third party and the appellants are entitled for all the benefits as contemplated under law.

9. Though the claim is made for an amount of Rs.4,00,000/-, the Tribunal has awarded a compensation of Rs.2,70,000/-. Since the deceased is an agricultural coolie and earning Rs.6,000/- per month and as there is no proof of income, the Tribunal has fixed a notional income of Rs.3,000/- per month, this Court is also inclined to fix the notional income of the deceased @ Rs.3,000/- per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (1 supra). Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-). After deduction of 50% towards personal expenses since the deceased was an unmarried person, the monthly income of the

deceased comes to Rs.2,100/- (Rs.4,200/- - Rs.2,100/- (50%)). Therefore, the annual income of the deceased comes to Rs.25,200/- (Rs.2,100/- X 12 months). Since the deceased was aged 20 years at the time of the accident, the multiplier for the age of the deceased is '18' as per the decision reported in **Sarla Verma's case** (3 supra). Hence, the compensation under the head 'loss of income' comes to Rs.4,53,600/- (Rs.25,200/- X 18). The appellants are also entitled to Rs.30,000/- towards conventional charges since the deceased was a bachelor, as per **Pranay Sethi's case** (1 supra). In the light of **Nanu Ram Alias Chuhru Ram's case** (2 supra), a sum of Rs.80,000/- (Rs.40,000/- X 2) is granted to the appellants under the head of loss of Filial Consortium. Therefore, the total compensation comes to Rs.5,63,600/- (Rs.4,53,600/- + Rs.30,000/- + Rs.80,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,70,000/- to Rs.5,63,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.4,00,000/-, 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: 26th July, 2019

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