

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1148 OF 2011

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 05.05.2008 passed in O.P.No.1434 of 2005 by the V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, City Criminal Courts, at Hyderabad (for short, Tribunal).

2. The brief facts of the case are that on 25.07.2004 the deceased was proceeding on a motor cycle, as a pillion rider, along with his son, towards Hyderabad side. On the way, when they reached Mahabbat Nagar Gate, a lorry bearing No.AAO 6939, which was proceeding in front of the Courtyard of the motor cycle of the deceased, in a rash and negligent manner, suddenly stopped, as a result of which, the motor cyclist hit against the backside of the lorry. Consequently, the deceased and her son, who is rider of the motor cycle, sustained injuries and the deceased was shifted to Osmania General Hospital, Hyderabad, and thereafter to Sai Krishna Hospital. She was further shifted to Sharoff Memorial Hospital on 01.08.2004, but she succumbed to the injuries on 10.08.2004, during her treatment at the said hospital. Earlier to the said accident, the deceased was working as a tailor and earning Rs.3,000/- per month. She has been contributing the same to the petitioners. Due to her sudden death, the petitioners lost her income and her services. The claimants are the husband and son of the deceased. Hence, they filed the present claim petition claiming a

compensation of Rs.3,00,000/-. The 1st respondent is the owner of the offending lorry bearing No.AAO 6939 and the 2nd respondent is its insurer.

3. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed a 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 evidence produced by the parties, the Tribunal granted total compensation of Rs.2,02,800/-, with interest @ 7% per annum from the date of petition till realization. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. With regard to Issue No.1 as to whether the accident took place on 25.07.2004 at about 8.00 p.m., due to rash and negligent driving of lorry bearing No.AAO 6939 by its driver is concerned, as per the evidence of P.W.3, who is the eye witness for the accident, it is seen that P.W.3 supported the case of the claimants stating that the lorry was parked and there were no lights and the motor cycle came behind and hit the lorry. No oral evidence was adduced on behalf of the respondents, as none entered appearance and *suo moto* the Tribunal cannot come to a conclusion that there shall be 40:60 ratio contributory negligence on the part of both the drivers of the motor cycle as

well as the lorry. As per the decision reported in **Karri Nagapadma Sridevi & Anr v. Oriental Fire & General Insurance Co., Ltd., & Ors.**,¹ it is held that contributory negligence is a matter of proof and not an assumption and whoever alleges act of rash and negligent driving on the part of other has to prove same by adduction of satisfactory evidence. It is further held that the assumption of contributory negligence is casual and baseless and Issue No.1 is answered accordingly.

7. Insofar as the Issue No.2 as to whether the petitioners are entitled to claim compensation from the respondents, if so, to what amount and from whom, is concerned, in the facts and circumstances of the case, as the Tribunal has fixed the notional income of the deceased at Rs.1,500/- per month, but since the deceased was working as a tailor and earning Rs.3,000/- per month, this Court is inclined to take the notional income of the deceased at 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 **National Insurance Co. Ltd. Vs. Pranay Sethi**². Therefore, the monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-). 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.2,800/- (Rs.4,200/- - Rs.1,400/- (Rs.4,200/- x 1/3rd)). Therefore, the annual income comes to Rs.33,600/- (Rs.2,800/-

¹ 2001(3) L.S. 355

² 2017(6) ALD 170 (SC)

x 12 months). As the deceased was aged 40 years at the time of the accident, the multiplier for the age of the deceased is '15' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**³. Hence, the compensation under the head 'loss of income' comes to Rs.5,04,000/- (Rs.33,600/- x 15). The amounts granted by the Tribunal towards Pain and Suffering (Rs.20,000/-), Medical Expenses (Rs.55,740/-) and Loss of Love and Affection (Rs.10,000/-) remains the same and the interest granted by the Tribunal @ 7% also remains the same. Therefore, the total compensation comes to Rs.5,89,740/- (Rs.5,04,000/- + Rs.20,000/- + Rs.55,740/- + Rs.10,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,02,800/- to Rs.5,89,740/- and the enhanced amount shall carry interest @ 7% per annum from the date of petition till realization. The enhanced amount shall be paid to the claimants on payment of deficit Court fee as the claimants paid Court fee claiming an amount of Rs.3,00,000/-.

Miscellaneous petitions pending, if any, shall stand closed.

No costs.

T.AMARNATH GOUD, J

Date: 18th July, 2019
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³ (2009) 6 SCC 121