

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1834 of 2011

JUDGMENT:

The appellants-claimants filed this appeal against the order and decree dated 29.07.2009 passed in O.P.No.1105 of 2008 by the V Additional Metropolitan Sessions Judge, Mahila Court-cum-XIX Additional Chief Judge, City Criminal Courts, Hyderabad.

2. The brief facts of the case are that on 03.12.2007 at about 5.00 PM., while the deceased baby C.D.Marinajanett, aged 11 years, was riding as pillion rider on motorcycle from her school to the house and when they reached in front of IB Bunglow, a lorry trolley bearing No.KA 01 AA 6673, driven by its driver in a rash and negligent manner and dashed against the motorcycle resulting death of the deceased on the spot. The police registered a case in Cr.No.468 of 2007 under Section 304-A IPC. Hence, the petitioners being parents of the deceased filed aforesaid O.P., claiming compensation of Rs.2,50,000/- for the death of the deceased.

3. The 1st respondent-owner of the crime vehicle remained *ex parte*. The 2nd respondent-insurer filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the petitioners is highly excessive and exorbitant and sought to dismiss the petition.

4. During the course of trial, the 1st petitioner himself was examined as P.W.1 and got marked Exs.A1 to A6. On behalf of the

respondents, no evidence was adduced, but Ex.B1-copy of insurance policy was marked.

5. After considering the material on record and the evidence adduced by the parties, the Court below allowed the O.P. in part awarding compensation of Rs.95,000/- with interest at 7.5% p.a. from the date of petition till the date of realization payable by respondents 1 and 2 jointly and severally. Aggrieved by the said quantum of compensation, the petitioners preferred the present appeal.

6. Learned counsel for the appellants/claimants contended that the Court below has awarded meager compensation under all the heads and he relied on the judgment in **Kishan Gopal and another v. Lala and others**¹, wherein the Apex Court has considered the case of death of a minor, aged 10 years, by taking notional income at Rs.30,000/- per annum and thus, he prays to enhance the compensation awarded by the Court below.

7. Sri R. Venkat Rao, learned Standing Counsel for the 2nd respondent, contended that as the deceased was unmarried, 50% has to be deducted towards her personal expenses.

8. The Court below, on appreciation of the evidence on record, took the notional income of the deceased at Rs.9,000/-per annum as non-earning member and after deducting 1/3rd towards personal expenses and by applying multiplier '15', the Tribunal awarded compensation of Rs.90,000/- towards loss of dependency;

¹ (2014) 1 SCC 244

Rs.5,000/-towards funeral expenses and in total, the amount of Rs.95,000/- was awarded as compensation to the petitioners.

9. Insofar as the annual income of the deceased is concerned, as per the decision of the Apex Court in **Kishan Gopal's** case, by taking the same as bench-mark, the notional income of the deceased should be taken at Rs.30,000/- per annum. Learned counsel for the appellants though argued that in case of fixing notional income, in the absence of proof of income, personal expenses need not be deducted, he could not place any decision in support of his argument. In catena of the judgments, the Honourable Supreme Court fixed notional income of the deceased and deducted personal expenses. In the recent judgment in **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & Others**², the Honourable Supreme Court made deduction towards personal expenditure while upholding the notional income. Therefore, the above contention of the learned counsel for the appellants is rejected. As the deceased was unmarried, 50% has to be deducted towards her personal expenses and thus, her annual income would come to Rs.15,000/-. Since the deceased was aged about 11 years, the appropriate multiplier up to the age of 15 years, as per the decision of the Apex Court in **Sarla Verma v Delhi Transport Corporation**³, is '15'. Thus, the loss of dependency comes to Rs.15,000x15=2,25,000/-. Further, in the light of the judgment of the Apex Court in **Magma General Insurance Company's case** (2 supra), the claimants being parents of the

² 2018 LawSuit (SC) 904

³ 2009(6) SCC 121

deceased, are entitled to Rs.40,000/- each, towards loss of love and affection and Rs.15,000/-towards funeral expenses, in stead of Rs.5,000/- as awarded by the Court below, is also awarded. Thus, in total, a sum of Rs.3,20,000/- is awarded to the claimants as compensation.

10. Accordingly, the appeal is allowed, by enhancing the compensation awarded by the Court below from Rs.95,000/- to Rs.3,20,000/-. The enhanced amount shall be paid along with interest @ 7.5% p.a., from the date of filing of this appeal to its realization and that as the claim is Rs.2,50,000/-, the claimants shall pay the deficit Court fee before the Court below.

11. Miscellaneous petitions, if any pending in this appeal, shall stand closed. No order as to costs.

T. AMARNATH GOUD, J

11th July, 2019

sj