

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1571 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 18.09.2007 passed in O.P.No.473 of 2005 by the Motor Accident Claims Tribunal (III Additional District Judge), (Fast Track Court), Nizamabad (for short, the Tribunal).

2. The brief facts of the case are that appellant Nos.1 & 2 are the parents and appellant No.3 is the brother of the deceased-Pawade Dasharath. On 10.09.2004, the deceased was traveling in an auto bearing No.AP 25U 5843 from Nizamabad to Sarangapoor Village and at about 8.00 p.m., when the auto reached near the Fishing Centre Office at Arsapally Village sivar, suddenly one tanker bearing No.AP 24T 2168 came in a rash and negligent manner at high speed from Arsapally side and dashed the auto, due to which the deceased fell from the auto and received head injury and other grievous injuries and immediately he was shifted to Government Hospital, Nizamabad, where while taking treatment, he died at 11.45 p.m. Prior to the accident, the deceased was hale and healthy and he was working as an Electrician and earning an income of Rs.10,000/- per month, but due to his untimely death in the accident, the appellants, who are completely depending upon the deceased, are put to sufferance and hence, they claimed an amount of Rs.5,00,000/- as compensation. The respondents 1 & 2, who are owner and insurer of the offending tanker, are jointly and

severally liable to pay the said compensation amount to the appellants.

3. Before the Tribunal, respondent Nos.1 & 2 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 tanker and awarded total compensation of Rs.2,12,500/-, with interest @ 7.5% per annum i.e., Rs.2,08,000/- towards loss of income, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. Sri K.M.Mahender Reddy, learned counsel for the appellants, submitted that since the deceased was an unmarried and working as electrician at the time of the accident and as per the evidence of P.W.1, the Tribunal has fixed the income of the deceased at Rs.2,000/- per month, which is very low. He further submitted that the appellants are also entitled to conventional charges @ Rs.30,000/- since the deceased was an unmarried person at the time of the accident as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance**

Co. Ltd. Vs. Pranay Sethi¹. He 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 & Others²**, appellant Nos.1 & 2, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of 'Filial Consortium'.

7. Sri N.Mohan Krishna, learned Standing Counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. In the facts and circumstances of the case, this Court is inclined to take the monthly of the deceased as Rs.3,000/- per month. Since the deceased was an unmarried person at the time of the accident, 50% has to be deducted towards personal expenses. Therefore, the monthly income of the deceased comes to Rs.1,500/- (Rs.3,000/- - Rs.1,500/- (50%)) and the annual income of the deceased comes to Rs.18,000/- (Rs.1,500/- x 12 months). Since the age of the deceased at the time of the accident was 28 years, the multiplier '17' has to be applied as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another³**. Hence, the compensation under the head 'loss of income' comes to Rs.3,06,000/- (Rs.18,000/- x 17). Since the deceased was an unmarried person, the appellants are also entitled to Rs.30,000/- towards conventional charges, as per the decision

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

³ (2009) 6 SCC 121

of the Hon'ble Supreme Court in **Pranay Sethi's case** (1 supra). In the light of **Magma General Insurance Co. Ltd.'s case** (2 supra), a sum of Rs.80,000/- (Rs.40,000/- x 2) is granted to appellant Nos.1 & 2, being the parents of the deceased, towards 'Filial Consortium'. Therefore, the total compensation comes to Rs.4,16,000/- (Rs.3,06,000/- + Rs.30,000/- + Rs.80,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,12,500/- to Rs.4,16,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 15th July 2019

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