THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.520 OF 2010

JUDGMENT:

This appeal is filed by the appellant-insurance company aggrieved by the Order and Decree dated 23-12-2009 passed in O.P.No.91 of 2008 by the Motor Accident Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that respondent No.1 is the mother and respondent Nos.2 to 4 are brothers of the deceased- Mohammed Khaja Ali. On 03.06.2007 at about 2.00 pm., while the deceased was riding the motorcycle bearing No.AP9BF 5509 along with his father Mohd.Ghouse as pillion rider, and when he reached Shabad Cross Roads on Chevella Hyderabad road, the deceased met with accident, sustained injuries and subsequently succumbed to the injuries due to the rash and negligent driving of the driver of Eicher/DCM van bearing No.AP28W 3006. Respondent Nos.1 to 4 herein filed the aforesaid OP claiming compensation of Rs.5,00,000/- against the owner (respondent No.5 herein) and insurer of the Eicher (appellant herein).

3. Before the Tribunal, respondent No.5 herein remained *ex parte.* The appellant 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 Eicher and awarded total compensation of Rs.4,00,000/-.

5. Dr.Muddu Vijay, learned standing counsel for the appellant, submits that though no proof of income is filed, the Tribunal has granted Rs.4,00,000/-, which is excessive. He further submits that as the deceased was bachelor, the Tribunal ought to have deducted 50% from the income of the deceased towards personal expenses instead of 1/3, as per the judgment of the Hon'ble Supreme Court in **Smt.Sarla Varma v Delhi Transport Corporation[1],** and sought to reduce the compensation amount. He relied on a judgment of the Hon'ble Supreme Court in **Ranjana Prakash Vs. Divisional Manager[2].**

6. A perusal of the order of the Tribunal, it is clear that as the claimants did not file any certificate to show that the deceased was working as a tailor, the Tribunal had fixed the monthly income of the deceased at Rs.3,600/- per month. From out of the said income, the Tribunal deducted 1/3 towards personal expenses and granted the compensation. As per **Sarla Varma**'s case (supra), 50% of the income should be deducted towards personal expenses, as the deceased was a bachelor. Therefore, the income of the deceased comes to Rs.1,800/- per month. The multiplier adopted by the Tribunal is 13. Hence, the compensation under the head

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[1] 2009(6) SCC 121
[2] 2011 (8) SCALE

pecuniary damages comes to Rs.2,80,000/- (Rs.1,800/- x 12 x 13). Respondents 1 to 4 are also entitled for an amount of Rs.10,000/- towards loss of estate, Rs.10,000/- towards loss of love and affection, Rs.3,000/- towards incidental charges and Rs.2,600/- towards funeral expenses as awarded by the Tribunal, therefore, the total compensation comes to Rs.3,05,600/-.

7. Accordingly, the appeal is partly allowed, modifying the order of the Tribunal, by reducing the compensation from Rs.4,00,000/- to Rs.3,05,600/-. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 19.06.2019
TJMR