

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1467 OF 2006

JUDGMENT:

This appeal is filed by the claimants aggrieved by the order and decree dated 05.4.2006 passed in M.V.O.P.No.201 of 2005 on the file of the Special Judge for Trial of Offences under SC/ST (POA) Act-cum-V Additional District and Sessions Court, Medak at Sangareddy (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 to 4 are the children and appellant No.5 is the mother of the deceased-Bandipuram Manaiiah; that on 01.02.2005, while the deceased was returning from Zaheerabad to his Village-Huggeli on a cycle and when he reached near Chakiri Vagu bridge in the limits of Ranjole Village on NH.9 at about 4 pm., a Mahindra Tractor bearing No.AP 23 TC 758 belonging to respondent No.1, being driven by its driver in a rash and negligent manner at a high speed dashed to the deceased due to which, he fell down and sustained severe injuries and that on 02.02.2005, while undergoing treatment at Gandhi Hospital, he succumbed to the injuries. Hence, the claimants filed the aforesaid MVOP claiming compensation of Rs.4,00,000/- against the owner and the insurer of the offending vehicle i.e., respondent Nos.1 and 2 herein respectively.

3. Before the Tribunal, respondent No.1-owner of the vehicle remained *ex parte*. Respondent No.2 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 trailer and accordingly, awarded total compensation of Rs.1,41,900/-, 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 learned counsel for the appellants and the learned Standing Counsel for respondent No.2-insurance company and perused the evidence and material on record.

6. Learned counsel for the appellants submitted that though it was the case of the claimants that the deceased was earning Rs.6,000/- per month by doing agriculture, the Tribunal erroneously fixed the income of the deceased at Rs.10,000/- per annum and the same is very low. He 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 Sethi¹.

7. Sri A.V.K.S.Prasad, learned Standing Counsel for respondent No.2-insurance company, submitted that the Tribunal passed a well-reasoned order and sought to dismiss the appeal.

¹ 2017(6) ALD 170 (SC)

8. P.W-1-wife of the deceased deposed that at the time of the accident, the deceased was hale and healthy and was earning Rs.6,000/- per month by doing agriculture. However, in the absence of any proof of the earnings of the deceased, this Court is inclined to take the notional income of the deceased at Rs.4,500/- per month as per Ramachandrappa v. Royal Sundaram Alliance Insurance Com. Ltd.² 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 (1 supra). Therefore, the monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). As there are five dependents to the deceased, after deducting 1/4th of Rs.6,300/- towards the personal expenses of the deceased, his annual contribution to the family comes to Rs.56,700/- (Rs.4,725/- X 12 months). As per the post-mortem report-Ex.P-6, the deceased was aged 40 years at the time of the accident and therefore, the multiplier applicable is '15' as per *Smt. Sarla Varma Vs. Delhi Transport Corporation*³. Hence, the compensation under the head 'loss of income' comes to Rs.8,50,000/- (Rs.56,700/- X 15). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional charges as per Pranay Sethi (1 supra). Since appellant Nos.2 to 4 were the minor children of the deceased as on the date of the incident, they are entitled to Rs.50,000/- each towards loss of love and affection as per **Magma General Insurance Co. Ltd. Vs.**

² (2011) 13 S.C.C. 236

³ 2009 (6) SCC 121

Nanu Ram Alias Chuhru Ram & Others⁴. In all, the appellants-claimants are entitled to a total compensation of Rs.10,70,000/- (Rs.8,50,000 + Rs.70,000/- + 1,50,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,41,900/- to Rs.10,70,000/-. The enhanced amount shall carry interest @ 7.5% per annum. As the claimants claimed only Rs.4,00,000/- before the Tribunal, they are directed to deposit deficit court fee while withdrawing the amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

24th October, 2019
dr

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⁴ 2018 LawSuit (SC) 904