THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

C.M.A.No.4425 of 2004 & Cross Objections SR No.1663 of 2005

COMMON JUDGMENT:

C.M.A.No.4425 of 2004 is filed assailing the judgment and award dated 02-06-2004 passed in O.P.No.31 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District.

2. Brief facts of the case are that on 04-01-1998, at 5.30 am, when the deceased-Kutumbareddy was proceeding on his motorcycle bearing No.AP 28 F 1090 from L.B.Nagar to go to his house and when he reached near NTR Nagar Chowrastha in front of Patel company, one Maruthi car bearing No.AEA 8811, which was coming in his opposite direction, at a high speed in a rash and negligent manner, dashed against him, due to which, he fell down on the road and sustained multiple injuries to all over the body and died on 10-01-1998. Hence, the claimants, who are wife, children and parents of the deceased, have filed the claim petition claiming compensation of Rs.12.00 lakhs on account of the death of the deceased.

3. The appellant and 6th respondent who are the insurer and owner of the crime vehicle, have filed their separate counters denying the material averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the deceased and that

they are not liable to pay any compensation and that the compensation claimed is on higher side.

2. 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 on the part of the driver of the crime vehicle only. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.8,40,000/- i.e. Rs.8,25,000/- towards loss of income; Rs.2,000/- towards funeral; Rs.5,000/- towards loss of consortium and Rs.7,460/- towards loss of estate. Accordingly, it partly allowed the claim petition granting total compensation of Rs.8,40,000/- with interest at 9% per annum through out.

4. Being aggrieved by the award and judgment, the insurer filed CMA No.4425 of 2004 and the claimants filed Cross Objections SR No.1663 of 2005 being not satisfied with the quantum of compensation.

5. Heard the learned Standing Counsel for the appellant-insurer and the learned counsel for the claimants.

6. Learned Standing Counsel for the appellant-insurer contends that the accident occurred due to negligent driving of the deceased only and therefore the award passed by the Tribunal is not in accordance with law; that the Tribunal ignored in appreciating the evidence of P.W.1 and R.W.3 who are the crucial witnesses to the incident; that the Maruthi car bearing No.AEA 8811 is no way

responsible for the accident and even if it is assumed that the said car is involved, then contributory negligence arises as two vehicles are involved; and that the authority who has issued salary slip was not examined to prove the income of the deceased. Hence, the impugned order may be set aside.

7. Learned counsel for the claimants contends that the Tribunal erred in granting compensation under the head of loss of income and also ignored in granting compensation under the head of conventional; that the Tribunal erred in taking deduction of 2/3rd personal expenses since there are five dependents; and that the Tribunal ignored in granting compensation under the heads of conventional and filial charges. Hence, the appeal filed by the insurer may be dismissed by enhancing the compensation.

8. As seen from the order of the Tribunal, the Tribunal has taken monthly income of the claimant as Rs.7,130/- per month. Admittedly, there is no dispute with regard to the deceased was working in A.P.Mahesh Cooperative Urban Bank Limited, Serilingampally and earning income of Rs.13,107/- as per Ex.A-5, Salary Certificate. Hence, the said income can be fixed as his monthly income.

9. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi[1],** the claimants are entitled to be granted future prospects at 50% as the

[1] 2017 (6) 170 (SC)

deceased got permanent job. Then his monthly income comes to Rs.19,664/- (13,109 + 6555) per month i.e. Rs.2,35,968/- per annum;

10. Further, as contended by the learned counsel for the claimants, during the pendency of the O.P., claimant Nos.4 and 5 who are father and mother of the deceased died because of their old age and the claim is restricted to only 1st claimant/wife and claimant Nos.2 and 3/children of the deceased, and presently there are three dependents of the deceased, 1/3rd deduction towards personal expenditure can be deducted instead of 50% out of the said income, then it comes to Rs.1,57,312/- per annum.

11. Further, since at the time of accident, the deceased was aged about 40 years as per Ex.A-3, postmortem report, the Tribunal has rightly taken multiplier '15'. Hence, the total loss of income in respect of the contribution towards his family members comes to Rs.23,59,680/- (Rs.1,57,312/- x 15).

12. Further, The Tribunal granted Rs.2,000/- towards funeral, Rs.5,000/- towards loss of consortium and Rs.7,460/- towards loss of estate, totaling Rs.14,460/-. However, compensation granted under these heads is to be re-determined since the deceased was a married person, the claimants are entitled to be granted compensation of Rs.70,000/- towards conventional head, which is covered all these heads, as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi**[2]. Hence, instead of granting

[2] 2017 (6) 170 (SC)

Rs.14,460/- under these heads, fixed amount of Rs.70,000/- is granted to the claimants..

13. Further, being miner children of the deceased, the claimant Nos.2 and 3 are also entitled to be granted compensation of Rs.1,00,000/- (Rs.50,000/- each) towards loss of filial as per the decision of the Supreme Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram[3].**

14. Therefore, the claimants are granted total compensation of Rs.25,29,680/- (rounded off to Rs.25,30,000/-) under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of income	Rs.8,25,000/-	Rs.23,59,680/-
02.	Funeral	Rs. 2,000/-	Nil
03.	Loss of Consortium	Rs. 5,000/-	Nil
04.	Loss of estate	Rs. 7,460/-	Nil
05.	Conventional	Nil	Rs. 70,000/-
06.	Filial	Nil	Rs. 1,00,000/-
Total		Rs.8,40,000/-	Rs.25,29,680/- (Rs.25,30,000/-)

15. In the result, the appeal filed by the insurer is dismissed and the Cross Objections filed by the claimants are allowed by enhancing the compensation awarded by the Tribunal from Rs.8,40,000/- to Rs.25,30,000/- (Rupees Twenty Five Lakhs Thirty Thousand only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellants/claimants are directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount along with

[3] 2018 Law Suit (SC) 904

proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw the entire amount. No costs.

16. As a sequel, miscellaneous petitions pending in these appeals, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25.10.2019.
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