THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1130 OF 2009

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 09.03.2009 passed in M.V.O.P.No.1540 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III-F.T.C.), Warangal at Mahabubabad (for short, Tribunal).

2. The brief facts of the case are that the appellants/claimants are the parents of the deceased-Gaddam Vishnu. On 16.06.2007, the deceased along with one Yakub and Janagam Sathish boarded in the auto bearing No.AP 36W 940 at Narsampet. When the said auto reached on the outskirts of Dharmaram Village on Warangal-Narsampet road at about 22.30 hours, in the meantime the deceased requested the driver of the said auto to stop by the side of road to attend calls of nature and after attending calls of nature while the deceased was proceeding towards auto to board, in the meantime another auto bearing No.AP 36W 8409 came in a rash and negligent manner with high speed from Warangal side being driven by Vengala @ Angala Suresh and dashed against the deceased and J.Sathish, as a result the deceased sustained severe injuries. Immediately injured deceased and another injured person were shifted to M.G.M. Hospital and the deceased succumbed to the injuries on 17.06.2007 at 01.50 hours in the midnight while undergoing treatment in M.G.M. Hospital, Warangal. A complaint was filed in Police Station, Geesugonda against the driver of auto bearing

No.AP 36W 8409. The deceased was hale and healthy prior to the accident and he was working as stone cutter and earning Rs.3,000/- per month and managing his entire family. The deceased was only son of the appellants/claimants. There is no chance to procure another child in future. The said accident was occurred due to rash and negligent driving of driver of offending auto and hence, the appellants/claimants claimed compensation of Rs.4,00,000/- against the respondents 1 and 2, who are owner and insurer of the offending auto respectively.

3. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed written statement 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 evidence produced by the parties, the Tribunal granted total compensation of Rs.2,42,000/-, with interest @ 7.5% per annum from the date of petition till realization, i.e., Rs.2,40,000/- towards loss of life and dependency and Rs.2,000/- towards funeral expenses, fixing the liability against respondent No.1 alone and the Tribunal exonerated the liability of respondent No.2 in the absence of any documentary evidence to show that the offending vehicle is insured with the 2nd respondent by the date of accident. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. As per the postal endorsement, the notice sent to the 1st respondent returned unserved with an endorsement “Refused”. Hence, it is a deemed service. Notice sent to the 2nd respondent is served on 13.06.2009. However, when the matter was listed on 11.06.2019 for final hearing, since there was no representation for the 2nd respondent/insurance company, this Court directed the office to print the name of the 2nd respondent-The ICICI Lombard General Insurance Co. Ltd., Warangal, and posted the matter to 18.06.2019. Again when the matter is listed on 18.06.2019, there was no representation for the respondents though the name of the 2nd respondent was printed in the cause list. Today also, when the matter is called, there is no representation for the respondents. Since this appeal pertains to the year 2009 and the accident has taken place in the year 2007, this Court is inclined to dispose of the appeal without adjourning the matter for any further period.

6. Heard Sri Mohan Prakash, learned counsel, representing Sri G.Anandam, learned counsel appearing for the appellants. Perused the material on record.

7. Though the claim is made for Rs.4,00,000/-, it is a bounden duty of this Court to award just and proper compensation. Though P.W.1 deposed that the deceased was working as stone cutter and earning Rs.3,000/- per month, but the Tribunal has taken the monthly salary of the deceased @ Rs.2,000/- per month in the absence of definite proof of income.

In the circumstances, this Court is inclined to take the income of the deceased at Rs.3,000/- per month since the deceased was a self-employed and working as a stone cutter at the time of the accident. The Tribunal did not grant any amount towards future prospects. Since the deceased was self-employed and aged about 20 years by the date of the accident, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi[1].** Therefore, the monthly income of the deceased comes to Rs.4,200/- (Rs.3,200/- + Rs.1,200/- (40%)), and after deduction of 1/2nd towards personal expenses of the deceased since the deceased was an unmarried person by the date of accident, which comes to Rs.2,100/- (Rs.4,200/- - Rs.2,100/- (1/2)), the annual income of the deceased comes to Rs.25,200/- (Rs.2,100/- x 12 months). The multiplier for the age of the deceased is '18' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another[2]**. Hence, the compensation under the head 'loss of income' comes to Rs.4,53,600/- (Rs.25,200/- x 18). Apart from the same, the appellants are entitled to Rs.30,000/- towards conventional heads since the deceased was an unmarried person by the date of the accident, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). Therefore, the total compensation comes to Rs.4,83,600/- (Rs.4,53,600/- + Rs.30,000/-).). In the light of **Magma General Insurance Co.**

[1] 2017(6) ALD 170 (SC)
[2] (2009) 6 SCC 121

Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[3], the appellants, being the parents of the deceased, are entitled to Rs.40,000/- each under the 'Filial Consortium'. Therefore, this Court is inclined to grant a sum of Rs.80,000/- (Rs.40,000/- + Rs.40,000/-) under the head 'Filial Consortium'. Therefore, the total compensation comes to Rs.5,63,600/- (Rs.4,83,600/- + Rs.80,000/-). Insofar as the interest is concerned, 7.5% interest shall be computed for the enhanced amount.

8. Insofar as Tribunal fixing the liability on respondent No.1 to pay the compensation is concerned, on the basis of the evidence, the Tribunal came to the conclusion that on perusal of Ex.A-5, it is indicated that I/C No.3227474 of ICICI Lombard General Insurance Company Limited valid till 23.08.2008 and, therefore, it is presumed that the policy might have been issued by the insurance company on 24.08.2007, but the accident was occurred on 16.06.2007 and even according to Ex.A-5, the offending vehicle is not covered by the insurance as on the date of accident and that none of the parties filed any documentary evidence to show that the offending vehicle is insured with the 2nd respondent by the date of accident and that in the absence of any documentary evidence and the entries in Motor Vehicle Inspector Report under Ex.A-5 coupled with the evidence of R.W.1, the Tribunal presumed that the offending vehicle is not insured with the 2nd respondent and therefore, the liability cannot be fastened against the insurance company, as such the

[3] 2018 LawSuit (SC) 904

claimants are entitled to receive compensation from the 1st respondent only. Accordingly, the Tribunal exonerated the liability of respondent No.2 and directed respondent No.1 to pay the compensation amount.

9. The appellants/claimants have filed a petition in MACMAMP.No.4473 of 2017 to receive the additional document i.e., certified copy of the insurance policy issued by the 2nd respondent, dated 24.08.2016, and this Court allowed the said petition today and the said document is taken on record. In view of the same, respondent No.2 is liable to pay the compensation amount.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,42,000/- to Rs.5,63,600/- and the enhanced amount shall carry interest at 7.5% per annum from the date of petition till realization. The enhanced amount shall be paid by the 2nd respondent/insurance company to the claimants on payment of deficit Court fee as the claimants paid Court fee claiming an amount of Rs.4,00,000/-. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th June, 2019

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