THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1368 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 05.03.2008 passed in M.V.O.P.No.1485 of 2004 by the Motor Accidents Claims Tribunal (District Judge), At Khammam (for short, the Tribunal).

2. The brief facts of the case are that on 08.01.2004, the deceased-Joguparthi Seshagiri Rao and his villagers Hanumanthu and Upendar in order to transport the cotton bags to Warangal Market and took the cotton bags to Dammaigudem Stage and waiting for the vehicle for transportation of the goods, at that time 1st respondent, who is the driver-cum-owner of the DCM Van bearing No.AP 16U 7672 came with the said van and accepted to transport the goods to Warangal Market on hire basis and that the deceased and his villagers loaded the cotton bags in the DCM Van of the 1st respondent to transport the same to Warangal Market and the deceased boarded the van as owner of the goods and when the DCM Van reached at the outskirts of Nancharimaduru Village at Sri Ram Sagar Canal Road diversion at about 2.00 hours on 09.01.2004, the 1st respondent drove the crime van in a rash and negligent manner at high speed and lost control over the vehicle and turned towards right side of the road, due to which the deceased fell on the road and the tractor engine which was already loaded on the vehicle fell on him and he died on the spot. The accident occurred only due to the rash

and negligent driving of the 1st respondent and the 1st respondent did not take any precautions in driving the vehicle. The deceased was hale and healthy prior to the date of the accident and he was aged 40 years and was an agriculturist having Ac.20.00 guntas of land and was getting Rs.2,00,000/- per annum and he was personally doing agriculture works and was maintaining the claimants with his earnings. Due to the sudden death of the deceased, the 1st petitioner lost her husband, petitioners 2 to 4 lost their father at their earliest age and the 5th petitioner lost her son at her old age. Hence, the appellants filed the present claim petition claiming a compensation of Rs.7,00,000/- towards general and special damages.

3. Before the Tribunal, respondent No.1 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 1st respondent, who is the driver of the offending DCM Van and awarded total compensation of Rs.4,92,000/-, with interest @ 7.5% per annum i.e., Rs.4,80,000/- towards loss of income, Rs.10,000/- towards loss of consortium and made the 1st respondent alone liable to pay the said amount and the Tribunal dismissed the claim petition against the 2nd respondent.

Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. With regard to issue No.1, the Tribunal erred in fixing the liability only on the 1st respondent, who is the driver of the offending DCM Van by exonerating the 2nd respondent/insurance company. Admittedly the crime vehicle is a goods vehicle and was having valid permit. It is to be seen that the tractor engine was loaded and thereafter, the cotton bags of the deceased were also loaded in the offending vehicle. When the accident has taken place, the deceased fell on the road and the goods covered under the permit, i.e., the tractor engine has fallen on the deceased, due to which he died on the spot. It is nobody's case that the 1st respondent, who is the driver-cum-owner, is not having a valid licence and the vehicle is not covered under any insurance policy. In view of the above, this Court has no hesitation to fasten the liability on the 2nd respondent/insurance company.

6. Insofar as fixing the quantum of compensation, the Tribunal has not considered awarding of future prospects and also conventional heads to the appellants. Since the Tribunal has fixed the notional income of the deceased @ Rs.4,000/- per month, this Court is also inclined to take the same amount as monthly income of the deceased. Apart from the same, the appellants are entitled to addition of 40% towards future prospects since the age of the deceased was 40 years at the time of the accident, as per the decision of the Hon'ble Supreme

Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]. Therefore, monthly income of the deceased comes to Rs.5,600/- (Rs.4,000/- + Rs.1,600/-). After deduction of 1/4th towards personal expenses of the deceased since there are five family members depending upon the deceased, the monthly income of the deceased would come to Rs.4,200/- (Rs.5,600/- - Rs.1,400/- (1/4th)). Therefore, the annual income of the deceased comes to Rs.50,400/- (Rs.4,200/- X 12 months). The multiplier for the age of the deceased is '15' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[2]. Hence, the compensation under the head of 'loss of income' comes to Rs.7,56,000/- (Rs.50,400/- X 15). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**[3], a sum of Rs.40,000/- is granted to the 5th appellant, who is the mother of the deceased, under the head of loss of filial consortium. Therefore, the total compensation comes to Rs.8,66,000/- (Rs.7,56,000/- + Rs.70,000/- + Rs.40,000/-).

7. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,92,000/- to Rs.8,66,000/- payable by both the respondents jointly and severally. The enhanced

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[1] 2017(6) ALD 170 (SC)
[2] (2009) 6 SCC 121
[3] 2018 LawSuit (SC) 904

amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.7,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 29th July, 2019

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