HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.26 of 2012

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 10-08-2011 passed in O.P.No.908 of 2009 by the VIII Additional District and Sessions Judge, L.B.Nagar, Ranga Reddy District (for short, the trial Court).

2. Brief facts of the case are that on 29-07-2009 at 4.30pm while the deceased – Druva Chandra was riding his motorcycle bearing No.AP 28 AL 5822 from Nagole X Roads towards Alkapuri and when he reached near Kun Automobiles, L.B.Nagar, Hyderabad, a lorry bearing No.TN-04-P- 4920 came from the back side driven by its driver at a high speed in a rash and negligent manner and over took his bike and got applied sudden break without any caution in front of him. Due to which, the inside iron being carried by the crime vehicle came out and pierced into the face of the deceased and therefore he sustained fatal injuries and died while shifting to the hospital. Hence, the claimants who are the parents of the deceased filed a claim petition against the respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle, claiming compensation of Rs.5.00 lakhs on the ground that the deceased was doing finance business and earning income of Rs.10,000/- per month and used to contribute the

same for maintaining his family and that at the time of accident, the deceased was aged about 20 years.

3. In the claim petition, the 2nd respondents-insurer 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 crime vehicle and therefore, the respondents are liable to pay the compensation. So far as quantum of compensation granted is concerned, the Tribunal granted an amount of Rs.2,00,000/- i.e. Rs.1,94,000/- towards loss of income; Rs.2,000/- towards funeral charges and Rs.4,000/- towards loss of estate. Accordingly, it partly allowed the claim petition by granting compensation of Rs.2,00,000/- with interest at 7.5% per annum through out.

5. Dissatisfied with the quantum of compensation, the appellants/claimants filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellants-claimants and Sri Srinivas Vutla, learned Standing Counsel, appearing for the 2nd respondents-insurer.

7. Learned counsel for the appellants-claimants contends that the trial Court ought to have taken the monthly income of the deceased @ Rs.6,500/- per month at least as he used to earn Rs.10,000/- per month instead of taking Rs.15,000/- per annum as notional income as he was a businessman; that the Tribunal also ignored in granting 40% future prospects as the claimant is aged about 19 years only at the time of accident as held by the Apex Court in **Natinal Insurance Co. Ltd. v. Prinay Sethi[1];** that as per the decision of the Supreme court in **Smt. Sarla Varma v. Delhi Transport Corporation[2],** at the age of 20, the appropriate multiplier is '18' instead of '16' applied by the trial Court; that since the deceased was a bachelor, the claimants are also entitled to be granted compensation of Rs.30,000/- towards conventional head as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi[3];** that being parents of the deceased, the claimants are also entitled to be granted compensation of Rs.80,000/- (Rs.40,000/- each) towards loss of filial as per the decision of the Supreme Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram[4];** that normally in the nature of the cases like this, the Courts ought to grant interest @ 9% instead of 7.5% and in support of his contention, he relied upon the decision of the Apex Court in **Parminder Singh v. New India Insurance Company Ltd. and**

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[1] 2017 (6) 170 (SC)
[2] (2009) 6 S.C.C. 121
[3] 2017 (6) 170 (SC)
[4] 2018 Law Suit (SC) 904

others[5]; and therefore, he prayed to enhance the compensation as the claimants are entitled to the same.

8. Sri Srinivas Vutla, learned counsel appearing for 2nd respondent, contends that there is no proof of income in this case, in the cases of this nature, a sum of Rs.100/- per day is to be taken into consideration; that according to the age of the deceased i.e. for the persons between 20 and 21 age group, standard deduction is to be taken @ 50% but not 1/3rd as taken by the trial Court; further as there is no standard income or permanent salary to the deceased, according to the judgment of the Supreme Court in **Smt. Sarla Varma** (2 supra), the claimants cannot be granted future prospects at all; and he also denied to increase the rate of interest. Therefore, he prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has taken monthly income of the claimant at Rs.10,000/- per annum as notional income. However, as contended by the learned counsel for the claimant, the deceased was doing finance business and earning some income and therefore considering his nature of profession, taking his monthly income @ Rs.5,500/- per month is just and reasonable. Then his annual income comes to Rs.66,000/-. In addition to that, if an amount of Rs.26,400/- i.e. 40% future prospects is added, it comes to Rs.92,400/-. Further as rightly contended by the learned counsel for the 2nd respondent-insurer, personal deduction

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[5] III (2019) ACC 1 (SC)

should be taken @ 50% instead of 1/3rd. Then it comes to Rs.46,200/- per annum. Further, as the appropriate multiplier is '18' instead of '16' as applied by the trial Court, the total compensation under the head of loss of income comes to Rs.8,31,000/- (46200 (x) 18).

10. Further, the appellants/claimants are also entitled to an amount Rs.30,000/- towards conventional head as per **Pranay Sethi** (3 supra) and Rs.80,000/- (Rs.40,000/- each) towards filial charges as per **Magma General Insurance Co. Ltd.,** (4 supra).

11. Further, as contended by the learned counsel for the appellants/claimants, they are entitled to be granted rate of interest @ 9% as per the decision of the Supreme Court in **Parminder Singh** (5 supra).

12. Except the above modification, the compensation awarded by the Tribunal under other additional heads viz., funeral and loss of estate shall remain unchanged. Therefore, the claimants are granted total compensation of Rs.9,47,600/- under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of income	Rs.1,94,000/-	Rs.8,31,000/-
02.	Funeral	Rs. 2,000/-	Rs. 2,000/-
03.	Loss of estate	Rs. 4,000/-	Rs. 4,000/-
04.	Filial charges	Nil	Rs. 80,000/-
05.	Conventional Head	Nil	Rs. 30,000/-
Total		Rs.2,00,000/-	Rs.9,47,600/-

13. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.2,00,000/- to Rs.9,47,600/- (Rupees Nine Lakhs Forty Seven Thousand and Six Hundred only). The enhanced amount of compensation shall carry interest at 9% per annum. The appellants/claimants are directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount along with 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.

14. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 20.08.2019
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