THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3446 OF 2005

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 09.12.2004 passed in O.P.No.1175 of 2001 by the learned III Additional Chief Judge, City Civil Court, Hyderabad (for short, the Court below).

2. The brief facts of the case are that the appellant No.1 is the wife, appellant No.2 is the daughter and appellant No.3 is the father of the deceased-Munikonda Srinivas. On 16.02.2001, while the deceased was proceeding on a scooter bearing No.AP 10K 3192 as a pillion rider along with his cousin M.Babu from Alwal towards Tumukunta Village, in front of Vyjayanti Diesel Pump on Rajiv Road, a Canter van bearing No.AP 9W 4135 (hereinafter referred to as 'the offending vehicle') came from the opposite side and dashed the scooter in a rash and negligent manner. As a result, the deceased fell down and sustained grievous injuries. Immediately, he was shifted to the Gandhi General Hospital in Secunderabad for treatment. He was discharged on 08.03.2001. Again he was admitted in the CDR Hospital on 08.03.2001 and treated under 'Jeevandata Scheme' till he succumbed to the injuries on 19.03.2001 at 7.00 a.m. The accident was caused only due to the rash and negligent driving of the driver of the offending vehicle and the appellants spent huge amount of Rs.90,000/- towards the treatment. As per the 'Jeevandata Scheme', the appellants claim to have received the treatment without paying the actual expenses and

with a liability to pay the same after the settlement of the case in the claim petition. The deceased is the sole bread earner of the appellants' family. The deceased was aged 25 years as on the date of his death. He was a skilled labourer and used to earn Rs.2,500/- per month. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle. As such both the respondents are jointly and severally liable to pay the compensation to the appellants. Hence, the appellants filed the present claim petition claiming a compensation of Rs.5,00,000/-.

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 driver of the offending vehicle and awarded total compensation of Rs.2,60,000/-, with interest @ 7.5% per annum from the date of petition till the date of realization, i.e., Rs.50,000/- towards Medical expenses, Rs.1,60,000/- towards loss of dependency, Rs.5,000/- towards transportation charges, Rs.15,000/- towards loss of estate, Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri Siva S.Lanka, learned counsel for the appellants, submitted that though the deceased was aged about 25 years at the time of the accident and used to work as a mason and also as a 'dhobi' under a contractor M.Dayananda and used to earn Rs.2,500/- per month, but the Court below has fixed the annual income of the deceased @ Rs.15,000/-, which is a very meager amount. 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 Sethi[1].** He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[2]**, appellant No.3, being the father of the deceased, is entitled to Rs.40,000/- and appellant No.2, being the minor child of the deceased, is entitled to Rs.50,000/- under the head of 'loss of filial consortium'.

6. Smt. Kalpana Ekbote, learned standing counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. Though the appellants stated that the deceased was aged about 25 years at the time of the accident and used to work as a mason and also as a 'dhobi' under a contractor M.Dayananda and used to earn Rs.2,500/- per month, the Court below erred in

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[1] 2017(6) ALD 170 (SC)
[2] 2018 LawSuit (SC) 904

fixing the annual income of the deceased @ Rs.15,000/-. Since the appellants have not produced any document of proof of income of the deceased, this Court though inclined to take the monthly notional income of the deceased @ Rs.4,500/- per month as per the Judgment rendered by the Supreme Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited[3],** but it is the case of the claimants that the income of the deceased is Rs.2,500/- per month and thus, it is considered for determining the compensation. 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** (supra). Therefore, the monthly income of the deceased comes to Rs.3,500/- (Rs.2,500/- + Rs.1,000/- (40%)). After deduction of 1/3rd towards personal expenses of the deceased since there are three members in the family of the deceased, the monthly income of the deceased comes to Rs.2,333/- (Rs.3,500/- - Rs.1,167/- (1/3rd)). Thus, the annual income of the deceased comes to Rs.27,996/- (Rs.2,333/- X 12 months). Since it is admitted by the appellants that the age of the deceased was 25 years at the time of the accident, but as per Ex.A-13-School Certificate, the exact age of the deceased is shown as 30 years. Therefore, the multiplier applicable for the age of the deceased is '17' as per the decision of the Apex Court reported in **Sarla Verma and others v. Delhi Transport Corporation and Another[4]**. Hence, the

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[3] AIR 2011 Supreme Court 2951
[4] (2009) 6 SCC 121

compensation under the head 'loss of dependency' comes to Rs.4,75,932/- (Rs.27,996/- X 17). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru Ram**'s case (supra), a sum of Rs.50,000/- is granted to the 2nd appellant, being the minor daughter of the deceased, and a sum of Rs.40,000/- is granted to the 3rd appellant, being the father of the deceased, under the head of 'loss of filial consortium'. As per Ex.A-12-Medical bills, the amount incurred by the appellants towards medical expenses was Rs.81,324.56 paise, but the Court below has awarded only Rs.50,000/- towards medical expenses. Therefore, taking into consideration Ex.A-12-Medical Bills, this Court is inclined to award an amount of Rs.81,325/- under the head of medical expenses. Except the above modification, rest of the award passed by the Court below remains the same. Except the above said modification, the rest of the award passed by the Tribunal remains un-changed.

8. Therefore, the total compensation under various heads comes as follows:

Sl.No.	**Name of Head**	**Awarded by Tribunal**	**Awarded by this Court**
01.	Loss of dependency	Rs.1,60,000/-	Rs.4,75,932/-
02.	Medical expenses	Rs.50,000/-	Rs.81,325/-
03.	Transportation charges	Rs.5,000/-	Rs.5,000/-
04.	Conventional charges	Rs.25,000/-	Rs.70,000/-
05.	Loss of love and affection	Rs.10,000/-	Rs.90,000/-
	TOTAL	**Rs.2,50,000/-**	**Rs.7,22,257/-**

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,50,000/- to Rs.7,22,257/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,00,000/-, 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. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 20.09.2019

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