HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3516 of 2005

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 16-09-2005 passed in O.P.No.263 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar (for short, the Tribunal).

2. Brief facts of the case are that the claimants, who are the legal heirs of the deceased-minor son, filed the claim petition against the respondents claiming compensation of Rs.2.00 lakhs for the death of the deceased in the accident took place on 21-05-2002 due to the rash and negligent driving of the driver of the lorry when he is proceeding on his cycle.

3. In the claim petition, the 2nd respondent-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 on the part of the driver of the crime vehicle. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.1,15,000 i.e. Rs.1,10,000/- towards loss of estate and Rs.5,000/- towards funeral, payable by both the

respondents jointly and severally, 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 the learned Standing Counsel for the 2nd respondent-insurer.

7. Learned counsel for the appellants-claimants contends that it is a case of death and at the time of accident, the deceased was aged about 12 years and as there is no proof of income, notional income at the rate of Rs.30,000/- per annum can be taken into consideration and multiplier is also wrongly taken by the Tribunal. Further, the Tribunal also erred in deducting personal expenses @ 1/3rd instead of 50% only. He further contends that the claimants are also entitled for compensation towards conventional and filial charges and therefore prayed for fair compensation.

8. Learned Standing Counsel for the respondents-insurer, contends that the Tribunal awarded compensation in a just and proper manner and he supported the order passed by the Tribunal and prayed to dismiss the appeal.

9. As seen from the order of the Tribunal, the Tribunal has taken annual income of the claimant at the rate of Rs.15,000/- per annum as the deceased was non-earning member. Admittedly, as per

the decision of the supreme court in **Kishan Gopal and another v. Lala and others**[1]**,** for the death of a boy, a minimum amount at the rate of Rs.30,000/- per annum can be taken as notional income.

10. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi**[2]**,** the deceased is entitled to be granted future prospects at 40%. Then his annual income comes to Rs.42,000/- (30,000 + 12,000); Considering the number of dependents of the deceased, at the rate of 50% towards personal expenditure can be deducted out of the said income, then it comes to Rs.21,000/- per annum. Further, since at the time of accident, the deceased was aged about 12 years, the correct multiplier as per **Sarla Verma and others v. Delhi Transport Corporation and another** [3]**,** is '15' instead of '11' as applied by the Tribunal. Hence, the total loss of income in respect of the contribution towards his family members comes to Rs.3,15,000/- (21000 x 15).

11. Further, The Tribunal granted Rs.5,000/- towards funeral charges. However, compensation granted under this head is to be re-determined since the deceased was a minor boy and unmarried person, the claimants are entitled to be granted compensation of Rs.30,000/- towards conventional head, which is covered funeral expenses as per the decision of the Supreme Court in **Pranay Sethi** (2 supra). Hence,

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[1] 2013 (6) ALD 59 (SC)
[2] 2017 (6) 170 (SC)
[3] 2009 (4) SCJ 91 = 2009 (6) SCC 121

instead of granting Rs.5000/- under this head, an amount of Rs.30,000/- is granted to the claimants.

12. Further, 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].**

13. Therefore, the claimants are granted total compensation of Rs.4,25,000/- (i.e. Rs.3,15,000/- (+) Rs.30,000/- (+) Rs.80,000/-).

14. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.1,15,000/- to Rs.4,25,000/- (Rupees Four Lakhs Twenty Five 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 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.

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

JUSTICE T.AMARNATH GOUD

Date: 12.11.2019
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[4] 2018 Law Suit (SC) 904