THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2115 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 28.05.2008 passed in M.V.O.P.No.200 of 2006 by the Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 and 3 are the daughters of the deceased, Doultabad Swamy. On 07.02.2000 at about 9.30 pm., while the deceased was traveling as pillion rider on Hero Honda Motor Cycle bearing No.AP23H 7142, the accident occurred due to the rash and negligent driving of motorcycle by its rider, who dashed against a lorry. In the said accident, the deceased fell underneath the rear side tyres of the lorry and died on the spot. The claimants filed aforesaid MVOP claiming compensation of Rs.5,00,000/- against respondents 1 and 2, owner and insurer of aforesaid motorcycle, for the death of the deceased.

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 negligent driving of rider of the motorcycle and awarded total compensation of Rs.2,51,800/-, with interest @ 7.5% per annum exonerating the liability of respondent No.2-insurance company and directed respondent No.1-owner of the motorcycle to pay the compensation, as the policy did not cover the risk of pillion rider. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. Sri P.Srihari Nath, learned counsel for the appellants, submitted that the Tribunal erroneously fixed the income of the deceased at Rs.1,800/- per month and the same is very low. He further submitted that in view of the circular issued by the Insurance Regulatory and Development Authority of India (IRDA) in the year 2009, pillion rider is also included under the risk coverage and hence, the finding of the Tribunal exonerating the liability of respondent No.2-insurance company is liable to be set aside. He further submitted that the appellants are entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi[1].**

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[1] 2017(6) ALD 170 (SC)

7. Sri T.Mahender Rao, learned Counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. The appellants have not filed any proof to show the income of the deceased and therefore, notional income of Rs.3,000/- per month is taken into consideration. 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, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-), and after deduction of 1/3rd, the annual income comes to Rs.33,600/- (Rs.2,800/- X 12). As the deceased was 33 years, the appropriate multiplier is '16'. Hence, the compensation under the head 'loss of dependency comes to Rs.5,37,600/- (Rs.33,600/- X 16). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**'s case (supra). As appellant Nos.2 and 3 are minor daughters, they are entitled to Rs.25,000/- each towards loss of love and affection, as per the ratio laid down by the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**[2]. Therefore, the total compensation comes to Rs.6,57,600/- (Rs.5,37,600/- + Rs.70,000/- + Rs.50,000/-).

9. Insofar as exonerating the liability of respondent No.2 is concerned, the Tribunal by holding that as respondent No.1 did not

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[2] 2018 Law Suit (SC) 904

pay any additional premium to cover the risk of pillion rider, exonerated the liability of respondent No.1 and directed respondent No.1 to pay the compensation. In view of the circular issued by the IRDA in the year 2009, pillion rider is also included under the risk coverage and hence, the finding of the Tribunal exonerating the liability of respondent No.2-insurance company is set aside.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.2,51,800/- to Rs.6,57,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 15.07.2019
TJMR