

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.170 OF 2013

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Award and Decree dated 26.11.2008 passed in M.V.O.P.No.230 of 2006 by the Motor Accident Claims Tribunal-cum-Principal District Judge, Warangal (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 sons, appellant No.4 is the mother and appellant No.5 is the father of the deceased, Lingampally Venkateswarlu. On 02.12.2003 at about 8.00 pm., while the deceased and his son were proceeding on TVS motorcycle bearing No.AP36TG 3136, and when they reached Dambar Plant, Madikonda, the driver of the tractor and trailer bearing No.AP36T 8934 and 8935 drove it with high speed in a rash and negligent manner and stopped it suddenly in the middle of the road without any indications, due to which, the TVS motorcycle hit the tractor-trailer from its back side. In the said accident, the deceased sustained head injury and died on the spot. The claimants filed aforesaid MVOP claiming compensation of Rs.23,00,000/- against respondent Nos.1 and 2, owner and insurer of the tractor-trailer, for the death of the deceased.

3. Before the Tribunal, the 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 tractor-trailor and awarded total compensation of Rs.5,76,645-23 Ps., with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri Ajay Kumar Madisetty, learned counsel for the appellants, submitted that though the appellants filed Ex.A.7-salary certificate, to show that the deceased was earning Rs.11,659/- per month by working as Caretaker in Osmania University, the Tribunal erroneously fixed the income of the deceased at Rs.6,479/- per month, which is very low. He further submitted that the age of the deceased was 48 years and the appropriate multiplier for calculation of compensation is '13' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**¹, but the Tribunal wrongly adopted the multiplier '10.45'. He further submitted that as the dependants are 5 in number, the Tribunal ought to have deducted 1/4th of his income towards personal expenditure instead of 1/3rd. He further submitted that the appellants are also entitled to addition of 30% on the income of the deceased towards future prospects and also

¹ 2009(6) SCC 121

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**². He further submitted that appellant Nos.4 and 5, being the parents of the deceased, are entitled to Rs.40,000/- each towards loss of filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**³.

6. Sri Challa Srinivas Reddy, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. Though the appellants filed Ex.A7 salary certificate of the deceased to show that the deceased was working as Caretaker in Osmania University and earning Rs.11,659/- per month, the Tribunal has wrongly fixed the income of the deceased at Rs.6,479/- per month. Therefore, I am inclined to fix the income of the deceased at Rs.11,659/- per month. Apart from the same, the appellants are entitled to addition of 30% towards future prospects, as per **Pranay Sethi's** case (supra). Therefore, monthly income of the deceased comes to Rs.15,157/- (Rs.11,659/- + Rs.3,498/-), and after deduction of 1/4th as the dependants are five in number, the annual income comes to Rs.1,36,416/- (Rs.11,368/- X 12). As the deceased was aged 48 years, the appropriate multiplier is '13'. Hence, the compensation under the head 'loss of dependency'

² 2017(6) ALD 170 (SC)

³ 2018 Law Suit (SC) 904

comes to Rs.17,73,408/- (Rs.1,36,416/- X 13). 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.4 and 5, being the parents of the deceased, are entitled to Rs.80,000/- (Rs.40,000/- each) towards filial consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.19,23,408/- (Rs.17,73,408/- + Rs.70,000/- + Rs.80,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.5,76,645.23 Ps., to Rs.19,23,408/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 14.08.2019
TJMR