

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.442 OF 2013

JUDGMENT:

This appeal is filed by the appellants-petitioners aggrieved by the award and decree dated 23.05.2006 passed in O.P.No.2319 of 2001 by the XI Additional Chief Judge, City Civil Court: Fast Track Court, Hyderabad (for short, the Tribunal).

2. For the sake of convenience, the parties herein are referred to as arrayed in the Tribunal.

3. The brief facts of the case are that petitioner No.1 is the 2nd wife and petitioner No.2 is the son of the deceased. On 25.09.1998, the deceased along with petitioner No.1, respondent No.4, who is the daughter of petitioner No.1 through his first wife, Vijaysen Reddy and their relative Baby Rupam were proceeding in a Maruthi Car bearing No.AP 15 G 5000 from Hyderabad to Peddapalli, and when they reached near Lakdram village limits on Rajiv Rahadari, one APSRTC bus bearing No.AP 9 Z 7548 driven by its driver in a rash and negligent manner and went off the road and in the meantime one Ambulance Van bearing No.AP 9 T 4281 driven by its driver in a rash and negligent manner dashed against the Maruthi Car. As a result of which, petitioner No.1, the deceased, their son and other inmates of the Maruthi car sustained injuries. The injured persons were shifted to Nizam Institute of Medical Science (NIMS), Hyderabad and the deceased died while undergoing treatment. The petitioners filed aforesaid OP claiming

compensation of Rs.20,00,000/- against respondents 1 to 3 and 7 for the death of the deceased.

4. Before the Tribunal, respondents 2, 3 and 7 filed separate counters denying the averments of the claim petition and it is contended by respondent Nos.2 and 3 that the insurer of Maruthi Car, in which the deceased and other injured persons were travelling, is a necessary party and the claim petition is bad for non-joinder of necessary party. It is contended by respondent No.7 that there was no negligence on the part of the driver of RTC bus and that the accident occurred due to negligent driving of the driver of Ambulance Van and the deceased, who was the driver of the Maruthi Car, and that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 Ambulance Van and awarded total compensation of Rs.10,00,000/- with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the petitioners filed the present appeal, seeking enhancement of the same.

6. Sri E. Venugopal Reddy, learned counsel for the appellants, submitted that the deceased is a Doctor and he is earning an amount of Rs.20,000/- per month, but the Tribunal erroneously fixed the income of the deceased at Rs.15,000/- per month and the same is very low. He further submitted that

the appellants are also 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. He further submitted that appellant No.2, being the minor son of the deceased, is entitled to Rs.50,000/- towards loss of parental consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**².

7. Sri C. Sunil Kumar Reddy, learned Standing Counsel for APSRTC, submitted that as per Ex.A.9- post-mortem report, the age of the deceased is 42 and the appropriate multiplier for calculation of compensation is '14' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**³, but the Tribunal wrongly adopted the multiplier '15' and in view of the number of dependants of the deceased, the appropriate deduction should be 1/4th, but not 1/3rd. He further submitted that except the same, the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. As per Ex.P.12, P.13 and P.14, the deceased is a doctor and as per the evidence of PWs.2 and 3, the deceased was earning Rs.25,000/- to Rs.30,000/- per month, as such, I am inclined to fix the income of the deceased at Rs.20,000/- per month notionally. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per

¹ 2017(6) ALD 170 (SC)

² 2018 Law Suit (SC) 904

³ 2009(6) SCC 121

Pranay Sethi's case (supra). Therefore, monthly income of the deceased comes to Rs.28,000/- (Rs.20,000 + Rs.8,000/-), and after deduction of $\frac{1}{4}$ th as the dependants are five in number, the annual income comes to Rs.2,52,000/-. (Rs.3,36,000/- - Rs.84,000/-). As the deceased was aged 42 years as per Ex.A.9, the appropriate multiplier is '14'. Hence, the compensation under the head 'loss of dependency' comes to Rs.35,28,000/- (Rs.2,52,000/- X 14). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi's** case (supra). As appellant No.2 is minor son, he is entitled to Rs.50,000/- towards parental consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.36,48,000/- (Rs.35,28,600/- + Rs.70,000/- + Rs.50,000/-). Though the claim is made for Rs.20,00,000/-, in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v. Gurudayal Singh**⁴, the compensation awarded can be more than the claim.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.10,00,000/- to Rs.36,48,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.20,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

⁴ 2003 (2) SCC 274

Miscellaneous petitions pending in both the appeals, if any, shall stand closed. No costs.

21st August 2019

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T.AMARNATH GOUD, J

