THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.120 OF 2015

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 27.12.2014 passed in O.P.No.305 of 2012 by the Motor Accident Claims Tribunal-cum-VIII Additional District Judge Nizamabad (for short, the Tribunal).

2. The brief facts of the case are that the appellants are the major sons of the deceased, Gaddam Akiti Chinna Devanna. On 23.03.1996 at about 12.30 P.M., while the deceased was traveling in a lorry along with his maize load on NH6, and when it reached Guthpa village shivar, the driver of the lorry drove the same in rash and negligent manner and the lorry turned turtle, resulting grievous injuries to the deceased. The deceased was shifted to Government Hospital, Armoor, where he succumbed to the injuries while undergoing treatment. The claimants filed the aforesaid OP claiming compensation of Rs.5,00,000/- against respondents 1 and 2, owner and insurer of the lorry, 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 rash and negligent driving of the driver of the DCM van and awarded total compensation of Rs.1,60,000/-, 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 Azar Sravan Kumar, learned counsel for the appellants, submitted that deceased was an agriculturist and earning Rs.15,000/- per month, but the Tribunal fixed the income of the deceased at Rs.3,000/- per month, which needs to be enhanced by applying appropriate multiplier as per **Smt. Sarla Varma Vs. Delhi Transport Corporation[1].** He further submitted that the appellants are also entitled to addition of 10% 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[2].**

6. Sri P.Harinath Gupta, learned counsel appearing for respondent No.2, submitted that since the appellants are major sons, they can not be treated as dependants of the deceased and hence, they are not entitled to claim compensation under Motor Vehicles Act and sought to set aside the order of the Tribunal.

7. This Court in **United India Insurance Co.Ltd., V.Shyam Rao Metre[3],** held that being the legal representatives, the claimants as major sons of the deceased, though not dependants on the deceased, are entitled to compensation. The Apex Court in **Montford Brothers of St.Gabriel V. United India Insurance[4]**, held that proceeding before Motor Vehicle Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not legal representative, no such plea can be raised at subsequent stage. Therefore, the claimants,

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[1] 2009 (6) SCC 1211
[2] 2017(6) ALD 170 (SC)
[3] 2014 Supreme (AP) 102
[4] I (2014) ACJ 461 (SC)

being the legal representatives of the deceased, are entitled to receive the compensation amount awarded in the present appeal.

8. Since the appellants have not filed any proof of evidence to show that the deceased was an agriculturist and earning Rs.15,0000/- per month, the Tribunal notionally fixed the income of the deceased at Rs.3,000/- per annum, which is quite reasonable. Since there are four dependants, 1/4th of his income should be deducted towards personal expenditure as decided by the Apex Court in **Smt. Sarla Varma** (Supra). The Tribunal has wrongly adopted the multiplier of '7' instead of '9' as the deceased was aged about 60 years at the time of accident. Apart from the same, the appellants are entitled to addition of 10% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, annual income of the deceased comes to Rs.39,600/- (Rs.36,000 + Rs.3,600/- future prospects). After deducting 1/4th towards personal expenses, the income of the deceased comes to Rs.29,700/- per annum. Hence, the compensation under the head 'loss of income' comes to Rs.2,67,300/- (Rs.29,700/- X 9). The funeral charges awarded by the Tribunal at the rate of Rs.25,000/- is confirmed. Therefore, the total compensation comes to Rs.2,92,300/- (Rs.2,67,300/- + Rs.25,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed in part, enhancing the compensation amount awarded by the Tribunal from Rs.1,60,000/- to Rs.2,92,300/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of

petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 09.08.2019.
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