THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.444 of 2011

JUDGMENT:

The appellants-claimants filed this appeal against the order and decree dated 13.12.2010 passed in M.V.O.P.No.1772 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge (FTC), Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 27.05.2009 at about 5.30 PM., while the deceased Baby Ayesha Mohiuddin @ Saba, aged 12 years, was proceeding by walk to her house at Malakpet and when she reached near T.V.Tower, Asmangadh, a van bearing No.AP 28 V 1904, driven by its driver with high speed in a rash and negligent manner and lost control over it, thereby the vehicle turned turtle and fell on her, as a result, she died on the spot. The police, Malakpet, registered a case in Cr.No.196 of 2009 under Section 304-A IPC against the driver of the van. The deceased was studying VII standard as meritorious student and was hale and healthy at the time of accident. Hence, the petitioners being parents and brothers of the deceased filed aforesaid O.P., claiming compensation of Rs.3,00,000/- for the death of the deceased.

3. The 1st respondent-owner of the crime vehicle remained *ex parte*. The 2nd respondent-insurer filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the petitioners is highly excessive and exorbitant and sought to dismiss the petition.

4. During the course of trial, the petitioners examined P.Ws.1 and 2 and got marked Exs.A1 to A3. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B-1 to B3 were marked and Exs.X1 and X2 were also marked.

5. After considering the material on record and the evidence adduced by the parties, the Tribunal allowed the O.P. in part awarding compensation of Rs.1,62,000/- with interest at 7.5% p.a. from the date of petition till the date of realization payable by respondents 1 and 2 jointly and severally. Aggrieved by the said quantum of compensation, the petitioners preferred the present appeal.

6. Learned counsel for the appellants/claimants contended that the Tribunal has awarded meager compensation under all the heads and he relied on the judgment in **Kishan Gopal and another v. Lala and others**[1], wherein the Apex Court has considered the case of death of a minor, aged 10 years, by taking notional income at Rs.30,000/- per annum and thus, he prays to enhance the compensation awarded by the Tribunal.

7. Sri A. Ramakrishna Reddy, learned Standing Counsel for the 2nd respondent, contended that as the deceased was unmarried, 50% has to be deducted towards her personal expenses.

8. The Tribunal, on appreciation of the evidence on record, took the income of the deceased at Rs.15,000/-per annum as non-earning member and after deducting 1/3rd towards personal

[1] (2014) 1 SCC 244

expenses and by applying multiplier '15', the Tribunal awarded compensation of Rs.1,50,000/- towards loss of dependency; Rs.10,000/- towards loss of love and affection; and Rs.2,000/- towards funeral expenses and in total, the compensation of Rs.1,62,000/- was awarded to the petitioners.

9. Insofar as the annual income of the deceased is concerned, as per the decision of the Apex Court in **Kishan Gopal's** case, the notional income of the deceased is fixed at Rs.30,000/- per annum. Learned counsel for the appellants though argued that in case of fixing notional income, in the absence of proof of income, personal expenses need not be deducted, he could not place any decision in support of his argument. In almost all the cases wherein the Hon'ble Supreme Court fixed notional income of the deceased, it has deducted personal expenses. In the recent judgment in **Magma General Insurance Co. Ltd. Vs. Nanu Ram[2],** the Hon'ble Supreme Court made deduction towards personal expenditure while upholding the notional income. Therefore, the above contention of the learned counsel for the appellants is rejected. As the deceased was unmarried, 50% has to be deducted towards her personal expenses and thus, her annual income would come to Rs.15,000/-. As the deceased was aged about 12 years, the appropriate multiplier up to the age of 15 years, as per the decision of the Apex Court in **Sarla Verma v Delhi Transport Corporation[3],** is '15'. Thus, the loss of dependency comes to Rs.15,000x15=2,25,000/-. Further, in the light of the judgment of the Apex Court in **Magma General Insurance**

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[2] 2018 ACJ 2782
[3] 2009(6) SCC 121

Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[4], claimant Nos.1 and 2 being parents of the deceased, are entitled to Rs.40,000/- each towards loss of love and affection and Rs.15,000/- towards funeral expenses. Thus, in total, a sum of Rs.3,20,000/- is awarded to the claimants as compensation.

10. Accordingly, the appeal is allowed, by enhancing the compensation awarded by the Tribunal from Rs.1,62,000/- to Rs.3,20,000/-. The enhanced amount shall be paid along with interest @ 7.5% p.a., from the date of filing of this appeal to its realization and that as the claim is Rs.3,00,000/-, the claimants shall pay the deficit Court fee before the Tribunal. Miscellaneous petitions, if any pending in this appeal, shall stand closed. No order as to costs.

T. AMARNATH GOUD, J

11th July, 2019

sj/tjmr

[4] 2018 LawSuit (SC) 904