THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.547 OF 2011

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 05.08.2008 passed in O.P.No.81 of 2006 by the Principal Motor Accidents Claims Tribunal, at Nalgonda (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is the wife, petitioners 2 & 3 are the sons and the 4th petitioner is the father of the deceased-Sheela Ramachandran @ Ramachandraiah. On 01.11.2000 at about 6.00 a.m., while the deceased was trying to cross the road at Tilpalli Street Junction, near Valtax Road from West to East, in the meantime a lorry bearing No.TMU 6244 came in a rash and negligent manner at high speed towards North to South and dashed to the deceased, as a result of which, the deceased sustained grievous injuries on chest and other parts of his body. Soon after the accident, the deceased was shifted to General Hospital, Chennai, for treatment, but he died while undergoing treatment in the said hospital. Prior to the accident, the deceased was hale and healthy, aged about 26 years and was working as auto driver and earning not less than Rs.6,000/- and used to contribute his

earnings for the maintenance and welfare of the petitioners. Hence, the petitioners filed the claim petition claiming compensation of Rs.5,00,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4. 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.

5. After considering the oral evidence of P.W.1 and the documentary evidence of Exs.A-1 to A-5 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.2,25,500/- i.e., Rs.2,16,000/- towards loss of dependency, Rs.2,500/- towards loss of estate, Rs.2,000/- towards burial expenses and Rs.5,000/- towards loss of consortium, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard Sri Venkat Reddy Thipparthi, learned counsel for the appellants and Sri V.Krishna Rao, learned standing counsel for the 2nd respondent/insurance company. Perused the material record.

7. Sri Venkat Reddy Thipparthi, learned counsel for the appellants, submitted that as the deceased was an auto driver and earning Rs.6,000/- per month prior to the date of the accident and since there is no income proof filed by the appellants, then as per the decision of the Apex Court reported in **Kishan Gopal and another v. Lala and others**[1], notional income of the deceased @ Rs.30,000/- per annum has to be fixed, but the Tribunal has erroneously taken the notional income of the deceased @ Rs.1,500/- per month. He further submitted that the appellants are also entitled to addition of 40% 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]**.** He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**[3], the appellants 2 & 3, being the minor sons of the deceased, are entitled to Rs.50,000/- each towards loss of love and affection and the 4th appellant, being the father of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium.

8. Sri V.Krishna Rao, learned standing counsel appearing for respondent No.2/insurance company, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

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[1] 2013 (6) ALD 59 (SC)
[2] 2017(6) ALD 170 (SC)
[3] 2018 LawSuit (SC) 904

9. Admittedly, since there is no income proof that the deceased was an auto driver and earning Rs.6,000/- per month prior to the date of the accident, then as per the decision of the Apex Court reported in **Kishan Gopal**'s case (supra), notional income of the deceased @ Rs.30,000/- per annum has to be fixed, but the Tribunal has erroneously taken the notional income of the deceased @ Rs.1,500/- per month. Therefore, this Court is inclined to fix the notional income of the deceased @ Rs.30,000/- per annum. Apart from the same, since the deceased was an auto driver and aged about 26 years as on the date of the accident, 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, annual income of the deceased comes to Rs.42,000/- (Rs.30,000/- + Rs.12,000/- (40%)), and after deduction of 1/4th towards personal deductions of the deceased since there are four family members of the deceased, the annual income of the deceased would come to Rs.31,500/- (Rs.42,000/- - Rs.10,500/- (1/4th)). The multiplier for the age of the deceased is '17' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[4]. Hence, the compensation under the head of 'loss of dependency' comes to Rs.5,35,500/- (Rs.31,500/- X 17). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias**

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[4] (2009) 6 SCC 121

Chuhru Ram's case (supra), a sum of Rs.50,000/- each i.e., Rs.1,00,000/- is granted to appellants 2 & 3, being the minor sons of the deceased, under the head of loss of love and affection and Rs.40,000/- is granted to the 4th appellant, being the father of the deceased towards loss of filial consortium. Therefore, the total compensation comes to Rs.7,45,500/- (Rs.5,35,500/- + Rs.70,000/- + Rs.1,00,000/- + Rs.40,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,25,500/- to Rs.7,45,500/-, payable by both the respondents jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 6th January, 2020
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