THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.171 OF 2011

JUDGMENT:

This appeal is filed by the appellants/claimants aggrieved by the order and decree dated 15.02.2006 passed in O.P.No.553 of 2004 by the Motor Accident Claims Tribunal-cum-IX Additional Chief Judge, City Civil Court, Fast Track Court, at Hyderabad (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 petitioners are the parents of the deceased-T.Mahesh, who was aged about 20 years and student of Intermediate as on the date of the accident. On 03.12.2003 at about 9.00 a.m., the deceased was traveling in a Jeep bearing No.AP 22U 4939 from Pebber to go to college and that the Jeep reached the outskirts of Pebber Village, one APSRTC bus bearing No.APZ 4777 came in opposite direction and dashed the jeep, due to which the deceased sustained injuries and immediately he was shifted to G.G.Hospital, Kurnool, and while he was undergoing treatment he died on 04.12.2003 at about 3.00 a.m. Due to the said accident, the petitioners have lost their helping hand during their old age. Hence, the petitioners filed the claim petition claiming compensation of Rs.2,50,000/-, payable by all the respondents. The 1st

respondent is the owner and the 2nd respondent is the insurer of the jeep bearing No.AP 22U 4939. The respondents 3 & 4 are the APSRTC.

4. Before the Tribunal, the 1st respondent remained *ex parte.* The 2nd respondent filed a counter denying the averments of the claim petition and contended that the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing No.AP9Z 4777 and therefore, the respondents 3 & 4 are liable to pay the compensation to the petitioners and prayed to dismiss the claim petition.

5. Respondents 3 & 4 filed a common counter denying the averments of the claim petition and contended that the amount claimed by the claimants is excessive and prayed to dismiss the claim petition.

6. After considering the oral evidence of P.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-5, the Tribunal awarded total compensation of Rs.1,84,500/-, i.e., Rs.1,60,000/- towards loss of life, Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards pain and suffering, with interest @ 7.5% per annum from the date of petition till the date of deposit. With regard to the liability of the respondents is concerned, the liability of the 1st respondent was fixed @ 50% and the liability of respondents 3 & 4 was fixed @ 50%. The claim petition against the 2nd respondent was dismissed. Dissatisfied with the

quantum of compensation, the appellants filed the present appeal seeking enhancement of the same.

7. Heard Smt A.Chaya Devi, learned counsel appearing for the appellants/claimants, Sri P.Bhakthavatsal, learned counsel appearing for the 1st respondent and Sri N.Vasudeva Reddy, learned standing counsel appearing for respondents 3 & 4/APSRTC. Perused the material record.

8. Smt A.Chaya Devi, learned counsel for the appellants, submitted that as the deceased was a student prior to the date of the accident, 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.15,000/- per annum. She 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, being the parents of the deceased, are entitled to Rs.40,000/- each towards loss of filial consortium.

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

9. Sri P.Bhakthavatsal, learned counsel appearing for the 1st respondent, submitted that the Tribunal has erroneously fixed the liability of the 1st respondent @ 50%. He further submitted that since the jeep bearing No.AP 22U 4939 was insured with the 2nd respondent/insurance company, the liability shall be fixed on the 2nd respondent/insurance company also.

10. Sri N.Vasudeva Reddy, learned standing counsel appearing for respondents 3 & 4/APSRTC, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

11. Admittedly, as the deceased was a student 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.15,000/- per annum. Thefore, 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 a student and aged about 20 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 50% towards personal deductions of the deceased since the deceased was unmarried by the date of the accident, the annual income of the deceased would come to

Rs.21,000/- (Rs.42,000/- - Rs.21,000/- (50%)). The multiplier for the age of the deceased is '18' 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 income' comes to Rs.3,78,000/- (Rs.21,000/- X 18). The appellants are also entitled to Rs.30,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Nanu Ram Alias Chuhru Ram**'s case (supra), a sum of Rs.40,000/- each i.e., Rs.80,000/- is granted to the appellants under the head of loss of filial consortium. The amount of Rs.10,000/- awarded by the Tribunal under the head of pain and suffering remains unchanged. Therefore, the total compensation comes to Rs.4,98,000/- (Rs.3,78,000/- + Rs.30,000/- + Rs.80,000/- + Rs.10,000/-).

12. Insofar as Tribunal fixing the liability @ 50% on respondent No.1 to pay the compensation is concerned, in the decision of the Hon'ble Supreme Court reported in **Shivaraj v. Rajendra**[5]**,** the Apex Court directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle. In view of the same, since the jeep bearing No.AP 22U 4939 has got insured with the 2nd respondent/insurance company, the 2nd respondent/insurance company is directed to pay the compensation amount at the first instance and recover the same from respondent No.1 insofar as 50% liability is concerned. The remaining 50% of the liability

[4] (2009) 6 SCC 121
[5] 2018 AIR (SC) 4252

fixed by the Tribunal to respondents 3 & 4 remains unchanged. Except the above modification, the rest of the award passed by the Tribunal remains unchanged.

13. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,84,500/- to Rs.4,98,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. With regard the liability of payment is concerned, the 2nd respondent/insurance company is directed to pay 50% of the enhanced compensation amount at the first instance and recover the same from respondent No.1-owner of the jeep bearing No.AP 22U 4939 and respondents 3 & 4/APSRTC shall pay the remaining 50% of the enhanced compensation. As the claimants claimed only Rs.2,50,000/-, 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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