

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.492 OF 2017

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 23.06.2016 passed in M.V.O.P.No.959 of 2013 by the Motor Vehicle Accidents Claims Tribunal-cum-X Additional Chief Judge, City Civil 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 1st petitioner is wife, petitioners 2 & 3 are the father and mother, 4th petitioner is the minor daughter of the deceased-K.Vijay Kumar. On 21.03.2013 at about 4.45 p.m., the deceased and his friend were returning on their motorcycle bearing No.AP 10UN T/R 9768 from Mamboji Pally to Medak. In front of petrol bunk on BT Road leading to Medak to Narsapur, the driver of the motor cycle i.e., his friend Md. Maqsood drove the vehicle in high speed and suddenly applied disc breaks without observing unknown auto and fell down on the road. As a result, the deceased hit to the grill in front of the petrol bunk and received head injuries. Immediately, he was taken to Government Area Hospital, Medak, and later shifted to Gandhi Hospital, Secunderabad. While undergoing treatment, he died on

22.03.2013. At the time of accident, the deceased was aged about 28 years, he was a driver and was earning Rs.10,000/- per month. Due to the accident, the petitioners are deprived of the earnings of the deceased. Hence, the petitioners filed the claim petition claiming compensation of Rs.10,00,000/-, payable by both the respondents, being the owner and insurer of the offending motorcycle.

4. Before the Tribunal, both the respondents filed separate counters 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.Ws.1 & 2 and the documentary evidence of Exs.A-1 to A-5, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending motorcycle and awarded total compensation @ Rs.7,69,000/- i.e., Rs.5,44,000/- towards loss of contribution, Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of estate and loss of love and affection and Rs.1,00,000/- towards loss of consortium, with interest @ 7.5% per annum from the date of petition till the date of deposit, 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 Jagathpal Reddy Kasi Reddy, learned counsel appearing for the appellants and Sri M.M. Ali, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material record.

7. Sri Jagathpal Reddy Kasi Reddy, learned counsel appearing for the appellants, submitted that the Tribunal has determined the income of the deceased @ Rs.4,000/- per month, which is very less, but as per the decision reported in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited**¹, if there is no income proof, then the monthly salary of the deceased has to be fixed @ Rs.4,500/-. 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. v. Pranay Sethi**². He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Others**³, appellant Nos.2 & 3, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of loss of filial consortium and appellant No.4, being the minor daughter of the deceased, is entitled to Rs.50,000/- towards loss of love and affection.

¹ AIR 2011 Supreme Court 2951

² 2017(6) ALD 170 (SC)

³ 2018 LawSuit (SC) 904

8. Sri M.M.Ali, 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.

9. Admittedly, the appellants have not filed any driving licence to show that the deceased was working as a driver and earning Rs.10,000/- per month. In the absence of any income proof, then as per the decision reported in **Ramachandrappa's** case (supra), the monthly salary of the deceased has to be fixed @ Rs.4,500/-. Therefore, this Court is also inclined to consider the same. Apart from the same, since the deceased was aged about 28 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's** case (supra). Therefore, monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/- (40%)), and after deduction of 1/4th towards personal deductions of the deceased since there are four family members of the deceased, the monthly income of the deceased would come Rs.4,725/- (Rs.6,300/- - Rs.1,575/- (1/4)). Therefore, the annual income of the deceased comes to Rs.56,700/- (Rs.4,725/- X 12 months). Since the deceased was aged about 28 years at the time of the accident, 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 Another⁴. Hence, the compensation under the head of 'loss of contribution' comes to Rs.9,63,900/- (Rs.56,700/- 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 Chuhru Ram's** case (supra), a sum of Rs.50,000/- is granted to appellant No.4, who is the minor daughter of the deceased, and a sum of Rs.40,000/- each i.e., Rs.80,000/- is granted to appellant Nos.2 & 3, who are parents of the deceased. Therefore, the total compensation comes to Rs.11,63,900/- (Rs.9,63,900/- + Rs.70,000/- + Rs.50,000/- + Rs.80,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.7,69,000/- to Rs.11,63,900/-, 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.10,00,000/-, 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. Out of the enhanced amount, the 1st appellant, who is the wife of the deceased, is entitled to the share of 40%, appellant Nos.2 & 3, who are the parents of the deceased, are entitled to the share of 10% each and the 4th

⁴ (2009) 6 SCC 121

appellant, who is the minor daughter of the deceased, is entitled to the share of 40%. On such deposit, appellant Nos.1, 2 & 3 are permitted to withdraw their respective shares as awarded above, subject to payment of deficit court fee. The share of the 4th appellant shall be kept in FDR till she attains majority. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 2nd January, 2020

KL

