THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1200 OF 2013

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Award and Decree dated 22.02.2013 passed in M.V.O.P.No.606 of 2009 by the Motor Vehicle Accident Claims Tribunal-cum- III-Additional District Judge, Warangal (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife and appellant No.2 is the son of the deceased, Darmula Mogili. On 05.07.2007, while the deceased was going to his house on his cycle, at about 11.00 AM., and when he reached Srinivasa Consultancy, a Maruti Zen car bearing No.AP09AK 113 came behind him in a rash and negligent manner at high speed and dashed the cycle, due to which, he fell down and sustained grievous injuries and died while undergoing treatment. The claimants filed the above M.V.O.P., claiming compensation of Rs.13,40,000/- for the death of the deceased.

3. Before the Tribunal, respondent Nos.1 and 2 owner and insurer of the car, filed separate counters denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the claimants is excessive, exorbitant, imaginary and out of proportion and therefore, sought to dismiss the 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 car, and awarded a total compensation of Rs.5,00,000/- with

interest @ 7% per annum. Dissatisfied with the order passed by the Tribunal, the appellants filed the present appeal, seeking enhancement of the compensation.

5. Sri M.Ajay Kumar, learned counsel appearing for the appellants, submitted that the Tribunal has granted meager amount of Rs.5,00,000/- against the claim of Rs.13,40,000/- towards compensation, which needs to be enhanced. He further submitted that the deceased was working as Attender in the office of Executive Engineer and as per Ex.A5 salary certificate, he was drawing salary of Rs.11,706/- per month. He further submitted that the appellants are also entitled to addition of 15% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]**.** He further submitted that the age of the deceased at the time of accident was 53 years and the appropriate multiplier for calculation of compensation is '11' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**[2]**.**

6. Sri T.Ramulu, learned Standing Counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and therefore, sought to dismiss the appeal.

7. Though the claimants filed Ex.A5 salary certificate of the deceased to show that the deceased was earning Rs.11,600/- per month, the Tribunal erroneously taken into consideration the net income of the deceased at Rs.9,800/- per month, which need to be

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[1] 2017(6) ALD 170 (SC)
[2] 2009(6) SCC 121

enhanced. The Tribunal after arriving the compensation on account of the death of the deceased at Rs.8,62,400/-, restricted the same to Rs.5,00,000/- on the ground that P.W.1 wife of the deceased is getting pension of Rs.5,000/- per month and son of the deceased was provided employment on compassionate grounds as Attender in addition to the death benefits of the deceased, which are against the law.

8. The Apex Court in **National Insurance Co.Ltd V. Rekhaben and others**[3], held that:

> "In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.
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> In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tort feasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be

[3] 2017 (5) ALD 7 (SC)

> deducted from the compensation which the claimant is entitled to receive from a tort feasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/ the driver of the offending vehicle or the insurer."

In view of the above decision, the appellants are entitled to the compensation basing on various heads on account of the death of the deceased, but the amounts received from the employer cannot be deducted on the ground that the wife of the deceased getting pension and his son was provided with employment.

9. In the light of Ex.A5 salary certificate filed by the appellants, this Court *prima facie* convinced that the deceased was earning Rs.11,600/- per month. The appropriate multiplier as per the decision of the Apex Court in **Smt.Sarla Varma**'s case (supra), basing on the age of the deceased at 53 years, is '11'. Apart from the same, the appellants are entitled to addition of 15% towards future prospects, as per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Therefore, the monthly income of the deceased comes to Rs.13,340/- (Rs.11,600/- + 15% future prospects) and after deducting 1/3rd of the income for his personal expenses, the loss of dependency comes to Rs.11,73,876/- (Rs.8893/- x 12 x 11). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). Therefore, the total compensation comes to Rs.12,43,876/- (Rs. 11,73,876/- + Rs.70,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.5,00,000/- to Rs.12,43,876/-. 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: 07.01.2020.
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HIGH COURT FOR THE STATE OF TELANGANA ★ HYDERABAD ★