

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.533 OF 2017

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 31.12.2015 passed in M.V.O.P.No.1704 of 2009 by the XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Court below).

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

3. The brief facts of the case are that the 1st petitioner is wife and petitioners 2 & 3 are the minor children of the deceased-D.Narsimha. On 19.06.2009 at about 10.10 a.m., the deceased was proceeding on his DCM vehicle bearing No.AP 28Y 8864 from Nallagodla to Tellapur, after crossing the Railway gate near gate No.2 of Laxmivihar, he stopped his vehicle on the left side of the road and got down from his vehicle and he was about to cross the road, meanwhile one tractor bearing No.AP 26U 3745 came behind him in a rash and negligent manner with high speed and dashed against the deceased, as a result of which, the deceased sustained grievous injuries on his head, back and face and other parts of the body and died instantaneously. Prior to the date of the accident, the deceased was hale and healthy and he was a heavy motor vehicle driver working under Vijay Bharath Manpower Consultants at

Kukatpally and earning Rs.10,500/- per month and spending the same on the petitioners, who are dependents on the earnings of the deceased. Hence, the petitioners filed the claim petition claiming compensation of Rs.12,00,000/-, payable by both the respondents, being the owner and insurer of the offending tractor.

4. Before the Court below, the 2nd respondent 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.Ws.1 to 3 & R.W.1 and the documentary evidence of Exs.A-1 to A-7, Exs.X-1 & X-2, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending tractor and awarded total compensation @ Rs.9,58,000/- i.e., Rs.8,53,000/- towards loss of income, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards loss of estate and Rs.30,000/- towards funeral expenses, with interest @ 9% 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 Chandrasekhar Reddy Gopi Reddy, learned counsel appearing for the appellants and Sri Ch.Ravinder,

learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material record.

7. Sri Chandrasekhar Reddy Gopi Reddy, learned counsel appearing for the appellants, submitted that at the time of accident, the deceased used to work as a heavy motor vehicle driver under Vijay Bharath Manpower Consultants at Kukatpally and earning Rs.10,500/- per month, but the Court below has erroneously determined the annual income of the deceased @ Rs.80,000/-, which is very less. 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**¹. 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**², appellant Nos.2 & 3, being the minor children of the deceased, are entitled to Rs.50,000/- each under the head of loss of love and affection.

8. Sri Ch.Ravinder, learned standing counsel appearing for respondent No.2/insurance company, submitted that the Court below passed a well reasoned order and sought to dismiss the appeal.

9. Admittedly, it is submitted by the claimants in the claim petition that at the time of accident, the deceased used to work

¹ 2017(6) ALD 170 (SC)

² 2018 LawSuit (SC) 904

as a heavy motor vehicle driver under Vijay Bharath Manpower Consultants at Kukatpally and earning Rs.10,500/- per month, but the Court below has erroneously determined the annual income of the deceased @ Rs.80,000/-, which is very less. Therefore, this Court is also inclined to consider the monthly income of the deceased @ Rs.10,500/-. Apart from the same, since the deceased was aged about 34 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.14,700/- (Rs.10,500/- + Rs.4,200/- (40%)), and after deduction of 1/3rd towards personal deductions of the deceased since there are three family members of the deceased, the monthly income of the deceased would come to Rs.9,800/- (Rs.14,700/- - Rs.4,900/- (1/3)). Therefore, the annual income of the deceased comes to Rs.1,17,600/- (Rs.9,800/- X 12 months). Since the deceased was aged about 34 years at the time of the accident, the multiplier for the age of the deceased is '16' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**³. Hence, the compensation under the head of 'loss of income' comes to Rs.18,81,600/- (Rs.1,17,600/- X 16). 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**

³ (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 appellant Nos.2 & 3, who are minor children of the deceased. Therefore, the total compensation comes to Rs.20,51,600/- (Rs.18,81,600/- + Rs.70,000/- + Rs.1,00,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Court below from Rs.9,58,000/- to Rs.20,51,600/-, 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.12,00,000/-, they are directed to deposit deficit Court fee before the Court below. 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 Court below, 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: 2nd January, 2020

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