

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. No.56 of 2013

JUDGMENT:

This appeal is filed by the claimants against the order dated 16.04.2012 passed in O.P. No.97 of 2009 by the II Additional Chief Judge-cum-Motor Accident Claims Tribunal, City Civil Courts, Hyderabad on the grounds that the learned Tribunal, without proper appreciation of the evidence on record, wrongly granted less compensation and it needs enhancement.

Brief facts of the case are that on 14.10.2008 at about 6:45 pm., while deceased was riding his motorcycle Hero Honda Glamour bearing No.AP 29H 6261 from Gajwel, towards Toopran, within village limits of Yavapur, a lorry bearing No.RJ-11 GA 0806 proceeding from Toopran towards Gajwel came in opposite direction, driven by its driver in a rash and negligent manner, and dashed the motor cycle, whereby the accident occurred. The offending lorry went further and dashed a Tata Sumo bearing No.AP 10L 5529. The claimants further pleaded that due to accident the deceased Bhoomaiah and pillion rider Venkataiah, and a person by name Siddartha, who was travelling in the Tata Sumo, died and some other persons sustained serious injuries. Against the said accident a case in Crime No.225 of 2008 was registered in Toopran Police Station for the offence

under Sections 304-A and 337 IPC against the driver of the lorry and the said driver was charge sheeted.

The claim of the claimants is that by the date of accident, the deceased was hale and healthy and he was aged about 48 years and prior to accident he was earning Rs.1,00,000/- per month by doing poultry business and being partner of Padmavati Rice Mill. Due to sudden death of deceased, the claimants lost love and affection and valuable financial support of the deceased. Hence, the claimants filed the claim petition claiming compensation of Rs.25,00,000/- against the respondents, being the owner and insurer of the offending vehicle.

Before the learned Tribunal, the first respondent remained *ex parte*. The second respondent, Insurance Company, filed its counter denying the averments of the claim petition.

After considering the oral evidence of P.Ws.1 to 5 and the documentary evidence of Exs.A-1 to A-31 and Ex.B-1, the learned Tribunal came to the conclusion that the deceased died due to the pleaded accident dated 14.10.2008 and the said accident has occurred owing to the rash and negligent driving of the lorry bearing No.RJ-11 GA 0806 by its driver and awarded compensation of Rs.14,20,000/- holding that the respondents 1 and 2 are liable to pay compensation jointly and severally.

Having not satisfied with the quantum of compensation awarded by the learned Tribunal, the claimants preferred the present appeal.

Heard the learned counsel on both sides and perused material placed on record.

The main grievance of the claimants is that the learned Tribunal has failed to appreciate the evidence adduced by them in a proper perspective. It is the case of the claimants that though they have adduced evidence supporting the claim that the deceased was earning around Rs.1,00,000/- per month by doing poultry business and was a partner in rice mill business apart from working as contractor and also engaged in agricultural operation, the learned Tribunal had wrongly taken only Rs.12,000/- per month and Rs.1,44,000/- per annum. Having perused the evidence adduced by the claimants, with regard to the earnings of the deceased, this Court feels that the same is meager and in view of the Exs.A-10 and A-11, deeds of partnership, Ex.A-15, proof of doing poultry business, Exs.A-12 and A-13, Pattadar Pass Books, and the Income Certificate issued by the Tahsildar, this Court feels that it would be justified to enhance the monthly income of the deceased from Rs.12,000/- to Rs.15,000/- per month and Rs.1,80,000/- per annum accordingly, the same is enhanced.

Since there is no dispute with regard to considering the age of the deceased as 50 years and application of multiplier is 13 the same are taking into consideration. Further, following the ratio laid down by the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS**¹ in the case of self employed 25% of future prospects has to be taken into consideration and accordingly the same is considered. Further, dependants being the five in number $\frac{1}{4}$ th have to be deducted towards personal expenses of the deceased. Thus, Rs.15,000/- pm., x 12 = 1,80,000/- + 45,000/- (addition of 25% towards future prospects) = 2,25,000/- (-) 56,250/- ($\frac{1}{4}$ th deduction towards personal expenses of the deceased) = 1,68,750/- x 13 = 21,93,750/-. Thus, total loss of dependency is Rs.21,93,750/-. Apart from the above, following the above judgment, Rs.40,000/- is awarded towards loss of consortium to the first claimant, Rs.15,000/- towards loss of estate and another Rs.15,000/- is awarded towards funeral expenses.

Further, following the ratio laid down by the Apex Court in **MAGMA GENERAL INSURANCE CO. LTD. Vs. NANU RAM ALIAS CHUHRU RAM & OTHERS**² the fifth claimant being the mother of the deceased is granted Rs.40,000/- under the head of loss of filial.

¹ MANU/SC/1366/2017

² 2018 Law Suit (SC) 904

Further, taking into consideration Exs.A-27 and A-30, Rs.35,440/- is granted towards repairs of the vehicle.

Thus, total compensation is enhanced from Rs.14,20,000/- to Rs.23,39,190/- (21,93,750 + 40,000 + 15,000 + 15,000 + 40,000/- + 35,440/-).

A Memo dated 31.12.2019 has been filed by the learned counsel for the claimants stating that the 5th claimant, who is the mother of the deceased, died on 26.05.2015 and except the claimants 1 to 4 there are no other legal heirs of the 5th claimant. Hence, the claimants 1 to 4 are the only legal heirs to succeed to the estate of the deceased 5th claimant. In view of the same, amount apportioned to the share of the 5th claimant shall be paid to the first claimant, who is the daughter-in-law of the deceased 5th claimant.

The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of the appeal till its realization.

The respondents are directed to deposit the enhanced amount of compensation 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 claimants are permitted to withdraw their respective shares, in the same proportion as held by the learned Tribunal.

In the result, appeal is allowed in part. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 07.01.2020

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