THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.60 of 2017

JUDGMENT:

This appeal is filed by the appellant-2nd respondent-insurance company aggrieved by the Order and Decree dated 11.05.2016 passed in M.V.O.P.No.953 of 2013 by Chairman, Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

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 husband, daughter and son of the deceased Smt N.Balamani. On 17.02.2013 at about 12:30 PM while the deceased was proceeding on Pulser motorcycle bearing No.AP 23 Y 6898 as a pillion rider, along with her brother-in-law N.Laxmaiah from their house towards Yedupayalu and when they reached near welcome board of Medak town on Sangareddy Road, at that time, the driver of lorry Tipper bearing No.AP 22 W 6011, drove the said vehicle at high speed in a rash and negligent manner and dashed against the deceased bike, as a result of which, the deceased fell down and sustained grievous injuries. Immediately, the deceased was shifted to Area Hospital, Medak, where she succumbed to injuries on 17.02.2013 at 2.10 p.m. Prior to the accident, the deceased was hale and healthy, aged

about 39 years and used to do tailoring work and earn Rs.7,000/- per month. The accident had occurred due to rash and negligent driving of driver of offending lorry tipper, which belongs to respondent No.1 and insured with respondent No.2 and the policy was in force as on the date of accident. Hence, the petitioners claimed compensation of Rs.10,00,000/- on account of death of the deceased in a motor accident. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 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 & 2 and R.W.1 and the documentary evidence of Exs.A-1 to A-6 and Ex.B.1-copy of insurance policy, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the offending lorry tipper and awarded total compensation of Rs.10,89,000/- i.e., Rs.8,64,000/- towards loss of dependency, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- (one lakh) towards loss of love & affection and Rs.25,000/- towards funeral expenses, with interest @ 7% per annum from the date of petition till the date of deposit. Aggrieved by the same, the

appellant-2nd respondent-insurance company filed the present appeal.

6. Heard Sri A.Ramakrishna Reddy, learned standing counsel appearing for the appellant/insurance company and Sri Jagathpal Reddy Kasi Reddy, learned counsel appearing for respondents 1 to 3/claimants. Perused the material record.

7. Sri A.Ramakrishna Reddy, learned standing counsel for the appellant/insurance company, submitted that the Tribunal has erroneously granted the amount of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, but as per the decision of the Apex Court reported in **National Insurance Co. Ltd. v. Pranay Sethi**[1], an amount of Rs.70,000/- has to be awarded under the head of 'conventional charges'. He further submitted that under the head of loss of love and affection, the Tribunal has granted Rs.1,00,000/-, but in view of the judgment of the Hon'ble Supreme Court reported in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Others**[2], the 3rd respondent/3rd claimant, being the minor son of the deceased, is entitled to Rs.50,000/- only towards loss of love and affection. Therefore, he prayed to reduce the compensation granted by the Tribunal.

8. Sri Jagathpal Reddy Kasi Reddy, learned counsel appearing for respondents 1 to 3/claimants, submitted that the

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

Tribunal passed a well reasoned order and sought to dismiss the appeal.

9. In view of the settled law laid down by the Apex Court on different issues in several decisions, the entire compensation needs to be re-determined. Since the Tribunal has taken the notional income of the deceased @ Rs.4,500/- per month, this Court is also inclined to consider the same. Apart from the same, since the deceased was aged about 32 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, monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/- (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.4,200/- (Rs.6,300/- - Rs.2,100/- (1/3)). Therefore, the annual income of the deceased comes to Rs.50,400/- (Rs.4,200/- X 12 months). 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 dependency' comes to Rs.8,06,400/- (Rs.50,400/- 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 Chuhru Ram**'s case (supra), a sum of Rs.50,000/- is granted to

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[3] (2009) 6 SCC 121

appellant No.3, who is the minor son of the deceased. Therefore, the total compensation comes to Rs.9,26,400/- (Rs.8,06,400/- + Rs.70,000/- + Rs.50,000/-). Except the said modification, the remaining operative portion of the impugned order is confirmed.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by reducing the compensation amount awarded by the Tribunal from Rs.10,89,000/- to Rs.9,26,400/- with interest @ 7.5% from the date of petition till the date of realization, payable by both the appellant/insurance company & the 4th respondent jointly and severally. The appellant & the 4th respondent are directed to deposit the compensation 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 respondents 1 to 3/claimants are permitted to withdraw their respective shares as awarded by the Tribunal. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 9th January, 2020

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