

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.2879 of 2019

JUDGMENT:

This appeal is filed by the National Insurance Company Limited under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam (for short 'the Tribunal'), in M.V.O.P.No.988 of 2012 dated 24.01.2019.

2. For the sake of convenience, the parties herein are referred to as arrayed in the Court below.

3. The brief facts of the case are that on 13.01.2011 the deceased went to the other side of the road from his shop for drinking soda and while returning he was crossing the road, one motorbike Pulsar bearing No.AP-20-K-1746 came from Z.P. Centre, Khammam, driven by its driver in a rash and negligent manner, dashed the deceased, due to which he fell down and received head injury and other injuries on the body and went into unconscious stage. Immediately, he was shifted to Cure Hospital and after first aid he was shifted to Mamata Hospital, Khammam and while undergoing treatment succumbed to the injuries on 18.01.2011.

4. The Tribunal after framing the issues and examining the witnesses, allowed the claim of the claimants and awarded an amount of Rs.23,11,525/- against the claim of Rs.15,00,000/-. Aggrieved by said award, the insurance company preferred the present appeal.

5. Learned counsel for the appellant-insurance company contended that the compensation amount awarded by the Tribunal is excessive and the same is liable to be set aside by allowing the appeal.

6. Learned counsel for the claimants-respondent Nos.1 to 3 supported the award of the Tribunal and sought to dismiss the appeal.

7. Admittedly it is a case of death and there is no dispute with regard to the manner of the accident. With regard to the quantum of compensation, the same needs to be modified.

8. So far as quantum of compensation is concerned, the Tribunal has taken the income of the deceased at Rs.2,47,006/- per annum as per Ex.A8-income tax returns for the year 2009-10, the same is considered as just and reasonable. The age of the deceased is 56 years as per his date of birth 25.11.1954 and '9 multiplier is applicable as per **Sarla Varma Vs. Delhi Transport Corporation**¹. As per the expression in **National Insurance Company Limited Vs. Pranay Sethi**², the deceased being self-employed and aged about 56 years, 10% future prospects can be taken into consideration, which comes to Rs.24,700/-, in all deceased annual income comes to Rs.2,71,706/- (Rs.2,47,006/- + Rs.24,700/-). The O.P. was preferred by 3 claimants i.e., spouse of the deceased and 2 dependent daughters of the deceased and the

¹ 2009 (6) SCC 121

² 2017 (6) SCC 170

mother of the deceased was shown as 3rd respondent, in all it is considered as 4 dependants. It is brought to the notice of this Court that during the pendency of this appeal, the 3rd respondent in OP i.e., mother of the deceased died. However, she was alive at the time of pendency of OP and when the order was passed. In view of the same, this Court considers the dependents are 4 in number and accordingly, 1/4th has to be deducted towards the personal expenses of the deceased. Out of Rs.2,71,706/-, if 1/4th is deducted towards the personal expenses of the deceased, the net income comes to Rs.2,03,780/- (Rs.2,71,706/- (-) Rs.67,926/-). The loss of dependency comes to Rs.2,03,780/- x 9 = Rs.18,34,020/-. The claimants are entitled for Rs.70,000/- under conventional heads as per **Pranay Sethi** supra. However, in so far as loss of filial of Rs.40,000/- to the mother of the deceased as per **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram**³, the same is not granted since she is not surviving. The total compensation to which the claimants are entitled to is Rs.19,04,020/-.

9. Accordingly and in the result, this Appeal is partly allowed by reducing the compensation amount from Rs.23,11,525/- to Rs.19,04,020/- with rate of interest @ 7.5% per annum from the date of petition till realization. Since the 3rd respondent in the OP i.e., mother of the deceased died, her share shall be equally distributed among the 3 claimants. The compensation amount shall be paid within two months from the date of receipt of this

³ 2018 Lawsuit (SC) 904

order. On such deposit, the claimants are entitled to withdraw the amount. No costs.

Miscellaneous petitions if any shall stand closed.

T.AMARNATH GOUD, J

Date: 02.01.2020
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