

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. No.1168 of 2017

JUDGMENT:

This appeal is filed by the claimants against the order dated 13.12.2016 passed in MVOP.No.2773 of 2014 by the Motor Vehicle Accidents Claims Tribunal-cum-X Additional Chief Judge, City Civil Court at Hyderabad.

Brief facts of the case are that on 19.05.2014 at about 7 pm., the first claimant was proceeding on his motor cycle along with his wife by name Manda Pushpamma, deceased, and their daughter name Arunamma, as pillion riders of TVS Excel bearing No.AP-9G-5802 from Bontapally to their residence and when they reached Dadigudem cross roads at Jinnaram Mandal in Medak District, one tractor bearing No.AP-15L-7978 came in opposite direction at high speed and the driver of the said tractor drove the same in a rash and negligent manner, came on wrong side and dashed to TVS Excel motor cycle on which the claimants and the said Pushpamma were proceeding. As a result of the said accident, the said Pushpamma fell down on the road and sustained fatal injuries on her body. Immediately she was shifted to Remedy Hospital and from there, she was shifted to Gandhi Hospital, Secunderabad and while under going treatment, she succumbed to injuries on 26.05.2014. The said accident occurred wherein the deceased died due to rash and negligent driving of the driver of the said tractor. The Police Jinnaram

Police Station registered a case in Crime No.119 of 2014 under Section 304-A and 337 IPC against the driver of the said tractor.

The claim of the claimants is that by the date of accident the deceased was aged 45 years and was doing business of vegetables and earning Rs.500/- per day. Claimants are husband and daughter of the deceased. Hence, the claimants filed the claim petition claiming compensation of Rs.12,00,000/- 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 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.

After considering the oral evidence of P.W.1 and Exs.A-1 to A-6 and Ex.B-1, the learned Tribunal came to the conclusion that the claimants have established the said accident that occurred due to rash and negligent driving of the offending tractor and awarded compensation of Rs.5,97,000/- with interest at the rate of 8% per annum from the date of petition till the date of decree and thereafter at the rate of 6% per annum till realization.

Having not satisfied with the compensation awarded by the learned Tribunal, claimants have filed the present appeal seeking enhancement of the compensation.

The learned counsel for the claimants submitted that the learned Tribunal erroneously fixed the income of the deceased, which is very low. In support of his contention he placed reliance on the judgment of the Apex Court in **SYED SADIQ Vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LITED**¹ wherein the income of a vegetable vendor was taken as Rs.6,500/- per month. Hence, going by the said decision, Rs.6,500/- can be taken as the income of the deceased in this case also since the deceased herein was also doing vegetable business.

He also submitted that the claimants are entitled to addition of 25% on the income of the deceased towards future prospects as per the ratio laid down by the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS**² since the deceased was aged 45 years and Rs.70,000/- under conventional heads. He also submitted that 1/3rd has to be deducted towards personal expenses of the deceased and appropriate multiplier would be 14 as per the judgment of the Apex Court in **SARLA VERMA**

¹ 2014 (2) SCC 735

² MANU/SC/1366/2017

***(SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION
AND ANOTHER³.***

The learned standing counsel appearing for the Insurance Company while reiterating the grounds that were raised before the learned Tribunal submitted to dismiss the appeal preferred by the claimants.

Heard the learned counsel appearing for the claimants and the learned standing counsel appearing for the Insurance Company, and perused the material placed on record.

After going through the judgments referred to hereinabove and taking into consideration the ratios laid down by the Apex Court calculations are made as under:

Rs.6,500/- pm., x 12 = 78,000/- + 25% (Rs.19,500/- addition of future prospects) = 97,500/- (-) 32,500/- (1/3rd towards personal expenses) = 65,000/- x 14 (multiplier) = 9,10,000/- + 70,000/- (under conventional heads) = 9,80,000/- + 5,000/- (Transportation) = 9,85,000/-.

Accordingly, this appeal is allowed in part to the extent indicated above enhancing the compensation amount awarded by the learned Tribunal from Rs.5,97,000/- to Rs.9,85,000/-, payable by both the respondents jointly and severally.

³ (2009) 6 Supreme Court Cases 121

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

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. There shall be no order as to costs.

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

JUSTICE T.AMARNATH GOUD

Date: 09.01.2020
LSK