

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2608 OF 2017

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 25.01.2017 passed in M.V.O.P.No.1087 of 2014 by the Motor Accident Claims Tribunal-cum-XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 to 4 are the sons, appellant No.5 is the daughter and appellant Nos.6 and 7 are the parents of the deceased, Shaik Azimuddin. On 27.01.2014 at about 1.00 pm., while the deceased was proceeding from Kothapet Fruit Market to Saroornagar, one JCB bearing No.29P 0267 came at high speed in a rash and negligent manner and dashed the deceased. In the said accident, the deceased sustained bleeding injuries and died while undergoing treatment. The claimants filed aforesaid MVOP claiming compensation of Rs.26,00,000/- against respondent Nos.1 and 2, owner and insurer of the JCB, for the death of the deceased.

3. Before the Tribunal, the owner of JCB remained *ex parte*. The insurance company 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.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident

occurred due to the rash and negligent driving of the driver of the JCB and awarded total compensation of Rs.13,53,000/- with interest @ 9% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri K.Hari Mohan Reddy, learned counsel for the appellants, submitted that though the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the JCB by its driver, but awarded a meager amount of Rs.13,53,000/- as against the claim of Rs.26,00,000/-. He further submitted that the appellants are also entitled to addition of 25% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹. He further submitted that appellant No.5, being the minor daughter of the deceased, is entitled to Rs.50,000/- towards loss of parental consortium and appellant Nos.6 and 7 being the parents of the deceased are entitled to Rs.40,000/- each towards loss filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**².

6. Sri A.Ramakrishna Reddy, learned Standing Counsel for respondent No.2, submitted that the Tribunal has wrongly fixed the

¹ 2017(6) ALD 170 (SC)

² 2018 Law Suit (SC) 904

income of the deceased, who is a fruit vendor at Rs.10,000/- per month, which is not supported by any oral or documentary evidence. In support of his arguments, he relied on a decision reported in **Syed Sadiq V. United India**³.

7. The Tribunal on consideration of the evidence produced before it, fixed the income of the deceased at Rs.10,000/- per month, which is in the opinion of this Court is just and proper. Since it is the appeal filed by the claimants and since the insurance company has not filed any appeal or cross objections, the contention of the learned counsel for the insurance company that the income fixed by the Tribunal at Rs.10,000/- for the fruit vendor is excessive, cannot be appreciated. It is seen from the cause title that there are seven dependants of the deceased. Leading life in Hyderabad with seven dependants is not possible without earning at least Rs.10,000/- per month. Therefore, this Court feels that fixing of income of the deceased at Rs.10,000/- per month by the Tribunal is just and proper.

8. It is evident from the order of the Tribunal that it has not considered future prospects while considering the income of the deceased, as per **Pranay Sethi's** case (supra) and this Court is inclined to consider the future prospects at 25% as the deceased was aged about 48 years and is self-employed. Therefore, monthly income of the deceased comes to Rs.12,500/- (Rs.10,000/- + Rs.2,500/-), and after deduction of 1/5th towards personal

³ 2014 (2) SCC 735

expenses, as the dependants are seven in number, the annual income comes to Rs.1,20,000/- (Rs.10,000/- X 12). As the deceased was aged 48 years as per Ex.A.4 postmortem report, the appropriate multiplier is '13'. Hence, the compensation under the head 'loss of dependency' comes to Rs.15,60,000/- (Rs.1,20,000/- X 13). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi's** case (supra). Appellant No.5, being the minor daughter, is entitled to Rs.50,000/- towards parental consortium and appellant Nos.6 and 7, being the parents of the deceased, are entitled to Rs.40,000/- each towards filial consortium, as per **Nanu Ram Alias Chuhru Ram's** case (supra). Therefore, the total compensation comes to Rs.17,60,000/- (Rs. 15,60,000/- + Rs.70,000/- + Rs.50,000/- + 80,000/-).

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.13,53,000 to Rs.17,60,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 10-01-2020
TJMR