THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.976 OF 2015

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 31.12.2014 passed in M.V.O.P.No.443 of 2013 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-Judge, Family Court-cum-Additional District Judge, at Karimnagar (for short, the Tribunal).

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 1st petitioner is wife, petitioners 2 & 3 are the minor children and the 4th petitioner is the father of the deceased-Panjala Mahender. On 16.12.2012, while the deceased was returning to his village from Rekurthi on his bike bearing No.AP-15-AD-8096 and when he reached near old Grampanchayat office, Rekurthy, at 5.00 p.m., the 1st respondent, being the driver, drove the lorry bearing No.AP-04-W-2600 with high speed in rash and negligent manner and dashed the deceased, as a result, he fell down on the road and the said lorry ran over on his head resulting on the spot death and the 1st respondent left the offending lorry and ran away from the scene of offence. Prior to the date of the accident, the deceased was a toddy tapper and

used to earn Rs.15,000/- per month and also cultivating his land and in all the deceased used to earn Rs.20,000/- per month. Hence, the petitioners filed the claim petition claiming compensation of Rs.6,00,000/-, payable by all the respondents, being the driver, owner and insurer of the offending lorry.

4. Before the Tribunal, the 3rd respondent filed a 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 to 3 and the documentary evidence of Exs.A-1 to A-7 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and the Tribunal has actually calculated the total compensation as Rs.8,55,600/- i.e., Rs.7,95,600/- towards loss of income, Rs.25,000/- towards loss of consortium, Rs.25,000/- towards loss of love & Rs.10,000/- towards funeral expenses, but since the claimants claimed only Rs.6,00,000/-, the Tribunal restricted the same to Rs.6,00,000/- and awarded an amount of Rs.6,00,000/- towards compensation with interest @ 7.5% per annum from the date of petition till the date of deposit payable by respondents 2 & 3 jointly and severally. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard Sri S.Bhoopal Reddy, learned counsel appearing for the appellants and Sri C.Narender Reddy, learned standing counsel appearing for the 3rd respondent/insurance company. Perused the material record.

7. Sri S.Bhoopal Reddy, learned counsel appearing for the appellants, submitted that the Tribunal has determined the income of the deceased @ Rs.4,000/- per month, which is very less, but as per the decision reported in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited**[1], if there is no income proof, then the monthly salary of the deceased has to be fixed @ Rs.4,500/-. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi**[2]. He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Others**[3], appellant Nos.2 & 3, being the minor children of the deceased, are entitled to Rs.50,000/- each under the head of loss of love and affection and appellant No.4, being the father of the deceased, is entitled to Rs.40,000/- towards loss of filial consortium.

[1] AIR 2011 Supreme Court 2951
[2] 2017(6) ALD 170 (SC)
[3] 2018 LawSuit (SC) 904

8. Sri C.Narender Reddy, learned standing counsel appearing for respondent No.3/insurance company, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

9. Admittedly, as per the claim petition, prior to the date of the accident, the deceased was a toddy tapper and used to earn Rs.15,000/- per month and also cultivating his land and in all the deceased used to earn Rs.20,000/- per month. From the above said avocations, the deceased can be considered as an agriculturist or an agricultural coolie. Therefore, in the absence of any income proof, then as per the decision reported in **Ramachandrappa**'s case (supra), the monthly salary of the deceased has to be fixed @ Rs.4,500/-. Therefore, this Court is also inclined to consider the same. Apart from the same, since the deceased was aged about 30 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**'s case (supra). Therefore, monthly income of the deceased comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/- (40%)), and after deduction of 1/4th towards personal deductions of the deceased since there are four family members of the deceased, the monthly income of the deceased would come to Rs.4,725/- (Rs.6,300/- - Rs.1,575/- (1/4)). Therefore, the annual income of the deceased comes to Rs.56,700/- (Rs.4,725/- X 12 months). Since the deceased was aged about 30 years at the time of the accident, the multiplier

for the age of the deceased is '17' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[4]. Hence, the compensation under the head of 'loss of income' comes to Rs.9,63,900/- (Rs.56,700/- X 17). 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.1,00,000/- (Rs.50,000/- + Rs.50,000/-) is granted to appellants 2 & 3, who are the minor children of the deceased, under the head of loss of love and affection and a sum of Rs.40,000/- is granted to the 4th appellant, who is the father of the deceased, under the head of loss of filial consortium. Therefore, the total compensation comes to Rs.11,73,900/- (Rs.9,63,900/- + Rs.70,000/- + Rs.1,00,000/- + Rs.40,000/-).

10. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.6,00,000/- to Rs.11,73,900/-, payable by respondents 2 & 3 jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.6,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Respondents 2 & 3 are directed to deposit the enhanced 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 appellants are

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[4] (2009) 6 SCC 121

permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 8th January, 2020

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