HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 2444 of 2015

JUDGMENT:

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 27.12.2014 passed in O.P.No.1755 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Courts, Hyderabad (for short "the Tribunal"), the appellants/claimants, preferred the present appeal seeking enhancement of the compensation.

2. The facts, in issue, are as under:

The appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.20,00,000/- for the death of one S. Santosh Goud (hereinafter referred to as "the deceased"), who died in a motor vehicle accident that occurred on 05.03.2013. It is stated that on the fateful day, at 2:00 p.m., while the deceased was proceeding on his motorcycle from Hyderabad towards Chilipiched Village, and when he reached near Mango Garden in the outskirts of Naguldevpally, the offending vehicle i.e., Lorry bearing No. AP 13Q 9200, owned by respondent No. 1, insured with respondent No. 2, being driven by its driver in a rash and negligent manner at high speed, dashed the motorcycle, due to which, the deceased fell down and received fatal injuries. The deceased died while he was being shifted to Gandhi Hospital, Hyderabad. According to the claimants, the deceased was 35 years, running bangle stores and earning Rs.25,000/- per month and due to sudden demise of the deceased, the appellants lost their source of income. Therefore, they laid the claim against the respondent Nos. 1 & 2. Respondent No. 3 is the mother of the deceased.

3. Respondent No. 1 remained ex parte before the tribunal and the respondent No. 2 filed counter resisting the claim of the claimants. Respondent No. 3 also filed her counter contending that she too dependent on the deceased and she being mother is entitled to get the compensation. After considering the claim and the counters filed by respondent No.2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.13,05,000/- in favour of claimants and also respondent No. 3, with interest at 7.5% per annum, payable by respondent Nos.1 and 2 jointly and severally. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement.

4. Heard both sides and perused the record.

5. The main contention of the learned counsel appearing for the appellants is that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1], the appellants are also entitled to the future prospects and also Rs.77,000/- under conventional heads. It is further contended that though the claimants claimed that the deceased was earning Rs.25,000/- per month by running two bangle stores, which is established through Ex.A.11, photographs and C.D., in the absence of any contra evidence, the tribunal ought not to have restricted the income of the deceased to Rs.10,000/-. It is lastly contended that the claimant Nos. 2 & 3, being the minor children of the deceased, are entitled to Rs.40,000/- each towards parental consortium as per the decision of the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***[2].

6. Learned Standing Counsel for respondent No.2 submits that except filing photographs and C.D. copy, the claimants have failed to adduce any evidence, either oral or documentary, to show that the deceased was running bangle stores, and even though no such evidence is produced, the tribunal has taken

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[1] 2017 ACJ 2700

[2] (2018) 18 SCC 130

the monthly income of the deceased at Rs.10,000/-, which is, in fact, adequate and therefore, the same needs no interference by this Court. It is submitted that the issue with regard to the future prospects has been considered by the Apex Court in ***Pranay Sethi and others*** (supra) and as per the said judgment, the appellants are entitled to addition of 40% to the established income towards future prospects. It is further submitted that the compensation towards non-pecuniary damages, the claimants are entitled to Rs.77,000/-.

7. A perusal of the impugned order discloses that the Tribunal has framed issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Lorry by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Lorry and has answered the issue in favour of the appellants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Lorry.

8. Insofar as the quantum of compensation is concerned, though the appellants claimed that the deceased was earning

Rs.25,000/- by running two bangle stores, they did not substantiate the same through any cogent evidence except filing Ex.A.11, photographs and C.D. In the absence of the same, the tribunal has rightly taken the monthly income of the deceased at Rs.10,000/-. However, the claimants are also entitled to addition of 40% towards future prospects to the established income, as per the decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra) since the deceased was 34 years at the time of the accident. Therefore, monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/- being 40% thereof). As the dependants are four in number, $1/4^{th}$ is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***[3]. After deducting $1/4^{th}$ amount towards his personal and living expenses, the contribution of the deceased to the family comes to Rs.10,500/- per month. Since the age of the deceased was 34 years at the time of the accident, the appropriate multiplier is '16' as per the decision reported in ***Sarla Verma*** (supra). Adopting multiplier '16', the total loss of dependency would be Rs.10,500/- x 12 x 16 = 20,16,000/-. The claimants are also entitled to Rs.77,000/- under the conventional heads as per **Pranay Sethi**'s case (supra). That apart, as per the decision of

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[3] 2009 ACJ 1298 (SC)

the Apex Court in ***Nanu Ram @ Chuhru Ram*** (supra), the claimant Nos. 2 & 3, being minor children of the deceased, are entitled to Rs.80,000/- towards parental consortium. Thus, in all the claimants and the respondent No. 3 are entitled to Rs.21,73,000/-.

9. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.13,05,000/- to Rs.21,73,000/-. The enhanced amount shall carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization. Time to deposit the amount is two months from the date of receipt of a copy of this order. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Since it is reported that respondent No. 3, mother of the deceased died, her share shall equally be distributed among the claimants. However, the claimants are directed to pay deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

26.12.2022
tsr

HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No. 2444 of 2015

DATE: 26-12-2022

TSR