THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.2544 OF 2015

JUDGMENT

Being dissatisfied with the compensation granted by the court of the Motor Accident Claims Tribunal – cum – II Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.1348 of 2012, the claimants filed the present appeal seeking enhancement of compensation.

2. The 1st claimant is the wife of the deceased – V.Ramesh, and claimants 2, 3 and 4 are the children of the deceased. The 1st respondent is the owner/insured of the crime vehicle and the 2nd respondent is its insurer.

3. The case of the claimants is that on 1.2.2011 while the deceased was proceeding on his motorbike from Koti to Malakpet and at about 8.15 am., when he reached Chandarghat bridge, auto bearing No. AP 11 W 0087 driven by its driver, in a rash and negligent manner, dashed the motorbike of the deceased, and as a result, he died on the spot. Police, Chandarghat Police Station, registered a case in Cr.No.26 of 2011 against the driver of the crime auto and after investigation filed charge sheet.

4. The further case of the claimants is that the deceased was an Advocate by profession, and was aged 42 years as on the date of the accident, and prior to the accident, he was earning an amount of Rs.2,40,000/- per annum and was contributing entire earnings to the

family and because of his death, the claimants lost their bread winner and the 1st claimant lost her husband, and the children lost the love and affection of their father. With these averments, they filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.29,00,000/-.

5. Both the respondents filed counter affidavit and contested the claim and sought for its dismissal.

6. The Tribunal considering the evidence of P.W.1, the wife of the deceased and also the evidence of P.W.2, who is an eye witness to the accident, coupled with Exs.A-1 to A-4, held that the accident occurred due to rash and negligent driving of the crime auto and that the deceased died due to the said accident.

7. The Tribunal further taking the income of the deceased as Rs.1,20,000/- per annum and after deducting 1/3rd and by applying the multiplier of 11, granted an amount of Rs.8,80,000/- towards loss of the dependency. The Tribunal also granted an amount of Rs.20,000/- towards funeral expenses, Rs.20,000/- towards loss of estate, Rs.20,000/- to the 1st claimant towards loss of consortium, and thus, in all, granted an amount of Rs.9,40,000/- with interest at the rate of 7.5 per cent per annum. Seeking enhancement of compensation, the claimants are before this court.

8. There is no dispute that the accident occurred due to rash and negligent driving of the driver of the crime auto. The dispute in this appeal is only with regard to quantum.

9. The case of the claimants is that the deceased was an Advocate by profession and earning an amount of Rs.2,40,000/- per annum and was contributing the entire earnings to the family. They got examined the Income Tax Inspector, ITO at Ward No.9(1) as P.W.3, and got marked the copies of income tax returns for the assessment years 2007-08, 2008-09 and 2009-10 as Exs.X-2 to X-4. For the assessment year 2007-08, the annual income of the deceased was shown as Rs.1,40,940/-; for the assessment year 2008-09, his annual income was shown as Rs.1,53,350/- ; and for the assessment year 2009-10, his annual income was shown as Rs.1,64,220/-. The accident in question was occurred on 1.2.2011. In the light of Exs.X-2 to X-4, I am inclined to take the average annual income of the three assessment years. It comes to Rs.1,52,830/-. The Tribunal has taken the annual income of the deceased as Rs.1,20,00/-. In light of the above documentary evidence, I do not find any justification in taking the said amount as the annual income of the deceased. Thus the same is accordingly modified.

10. As per the income tax returns, the deceased is shown as aged 52 years. In view of the judgment of the Apex Court in

NATIONAL INSURANCE CO. LTD. vs. PRANAY SETHI[1], he is entitled to future prospects of 10%. 10% of Rs.1,52,830/- comes to Rs.15,283/-. Thus the annual income of the deceased including future prospects comes to Rs.1,68,113/-.

11. The claimants are the dependants of the deceased, and they are four in number and hence as per the judgment of the Apex Court in SARLA VERMA vs. DELHI TRANSPORT CORPORATION[2], the deduction towards personal and living expenses of the deceased shall be 1/4th. But the Tribunal deducted 1/3rd, and the same is accordingly modified. If 1/4th is deducted from Rs.1,68,113/-, the income that the deceased would be contributing to his family per annum comes to Rs.1,26,084.75. For the age group of the deceased, the appropriate multiplier is '11'. Thus the amount towards loss of dependency comes to Rs.13,86,932.25 (Rs.1,26,084.75 x 11 = Rs.13,86,932.25).

12. As per the judgment of the Apex Court in Pranay Sethi's case, the claimants are entitled to Rs.77,000/- towards conventional heads. The amounts granted by the Tribunal under these heads, is accordingly enhanced. The claimant No.4 being minor, he is entitled to an amount of Rs.50,000/- towards loss of parental consortium as per the judgment of the Apex Court in MAGMA GENERAL INSURANCE CO. LTD. v. NANU RAM[3].

[1] AIR 2017 SC 5157
[2] (2009)6 SCC 121
[3] (2018)18 SCC 130

13. Thus, the amount of Rs.9,40,000/- granted by the Tribunal is enhanced to Rs.15,13,932/- (Rs.13,86,932.25 + Rs.77,000/- + Rs.50,000 = Rs.15,13,932.25, rounded off to Rs.15,13,932/-) with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization. The respondents 1 and 2 are jointly and severally liable to pay the compensation.

14. The apportionment of compensation among the claimants, and its deposit in nationalized bank and withdrawal shall be as ordered by the Tribunal.

15. The respondents shall deposit the compensation within a period of two months from the date of receipt of a copy of this order. Any amount already deposited shall be given credit to.

16. The appeal is accordingly allowed in apart as indicated above.

17. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:17—11—2022
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