

**HONOURABLE SRI JUSTICE M. GANGA RAO**

**M.A.C.M.A.No.537 of 2007**

**JUDGMENT:**

The appellants are the claimants filed this appeal against the award and decree, dated 29.11.2006, passed in O.P.No.481 of 2004 by the Motor Accident Claims Tribunal-cum-District Judge, Nellore, whereby granted compensation of Rs.1,85,000/- with interest at 7.5% per annum for the death of the deceased Mamuduru Ravi Kumar, in the motor vehicle accident occurred on 26.06.2004, for enhancement of the compensation.

2. The 1<sup>st</sup> appellant is wife and 2<sup>nd</sup> appellant is minor daughter of the deceased Mamuduru Ravi Kumar, filed claim petition under Section 166 of the Motor Vehicles Act for grant of compensation of Rs.3,50,000/- stating that the deceased used to work as a cleaner on the lorry bearing No.AP 26-U-7679 owned by respondent No.3 and used to earn Rs.3,000/- per month. The offending lorry bearing No. AP 26-W-1661 loaded with tomatoes, ran over the deceased and the deceased died on the spot due to the accident caused by the rash and negligent driving of the driver of the offending vehicle.

3. The respondents 1 and 3 remained exparte.

4. The respondent No.2 is the insurer of the offending vehicle bearing No.AP 26-W-1661 and respondent No.4 is insurer of the lorry bearing No.AP 26-U-7679, on which the deceased used to work as cleaner. Both the respondents filed their counters denying the averments of the claim petition.

5. Based on the pleadings of the parties, the Tribunal framed the following issues for its consideration.

- 1) Whether the accident occurred out of the use of the motor vehicle bearing Registration No. AP 26-W-1661 of respondent No.1?
- 2) Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
- 3) To what relief?

6. During trial, on behalf of the appellants, PWs.1 and 2 examined and Exs.A.1 to A.6 were got marked. On behalf of the respondents, Exs.B.1 to B2 insurance policies were marked.

7. The Tribunal, based on the evidence of PWs.1 and 2 and Ex.A1 copy of FIR and Ex.A2 copy of charge sheet, has come to the conclusion that the accident was occurred due to rash and negligent driving of the offending vehicle bearing No.AP 26-W-1661. The nature of the accident was not denied by the respondents. There is no contrary evidence available on record to find fault with the finding of the Tribunal that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle bearing No.AP 26-W-1661. To arrive quantum of compensation, the Tribunal has taken the income of the deceased as Rs.1,200/- per month, who worked as a cleaner and Rs.800/- was taken as contribution of the deceased to his family per month. Accordingly, the Tribunal has arrived at Rs.9,600/- towards annual contribution of the deceased and the deceased was aged about 30 years at the time of the accident the multiplier '16' is applied and the Tribunal computed loss of dependency of the appellants as Rs.1,53,600/- (Rs.9,600/- X 16). Further, the Tribunal awarded Rs.15,000/- towards non-pecuniary

damages and Rs.15,000/- towards loss of consortium to the first appellant-wife. The Tribunal granted total compensation of Rs.1,83,600/- rounded off to Rs.1,85,000/- with interest at 7.5% per annum.

8. Sri P.Ganga Rami Reddy, learned counsel for the appellants submits that the Tribunal has grossly erred in fixing the monthly income of the deceased as Rs.1,200/- per month. Even though the deceased used to earn Rs.3,000/- per month as a cleaner of the lorry, the Tribunal erred in rejecting the evidence of PW.2, who was the driver of the lorry, deposed that the deceased used to work as cleaner on the lorry used to get Rs.3,000/- per month. At least, the Tribunal ought to have been fixed the income of the deceased as Rs.1,500/- per month. Learned counsel would further contended that the Tribunal ought to have granted Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as the appellants are entitled for the said compensation including compensation towards future prospectus as per the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited vs. Pranay Sethi and others***<sup>1</sup>.

9. Sri Naresh Byrapaneni, counsel appearing for the second respondent, insurance company would contend that there is no illegality or irregularity in the award passed by the Tribunal. Tribunal has rightly taken the income of the deceased as Rs.1,200/- in the absence of any legal evidence and deceased monthly contribution to his family was taken as Rs.800/-, annual loss of dependency was

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<sup>1</sup>. 2017 ACJ 2700

taken as Rs.9,600/- (Rs.800/- X 12). The deceased was aged about 30 years, the Tribunal has taken the multiplier '16' to arrive the loss of dependency at Rs.1,53,600/- (Rs.9,600/- X 16). Further, the Tribunal granted Rs.15,000/- towards non-pecuniary damages and Rs.15,000/- towards loss of consortium. The award of total compensation of Rs.1,85,000/- along with interest at 7.5% could not be said to be meager compensation.

10. This Court, having considered the evidence on record, submissions of learned counsel, perused the documents, has come to the conclusion that the Tribunal ought to have granted compensation of Rs.70,000/- under conventional heads, such as Rs.40,000/- towards loss of consortium and Rs.15,000/- towards loss of expense estate, Rs.15,000/- towards funeral expenses as per the decision in *Pranay Sethi's* case, referred supra.

11. The deceased used work as a cleaner of a lorry and his monthly wages could be taken as Rs.1,500/- per month. The monthly contribution of the deceased to his family would be taken as Rs.1,000/- after deduction of Rs.500/- towards 1/3 of his personal expenses. Thus the total loss of dependency could be arrived at Rs.1,92,000/- (Rs.12,000/-X16) by applying multiplier '16' as the deceased aged 30 years. The deceased being fixed wage earner and aged 30 years, the appellants are entitled for 40% of his annual income towards loss of future prospectus as per the decision in *Pranay Sethi's* case. The compensation about future prospectus could be arrived at Rs.76,800/- (Rs.12,000/- X 16 = Rs.1,92,000/- X 40%). Thus the total compensation of Rs.3,38,800/- (Rs.1,92,000/- +Rs.70,000/-+Rs.76,800/-) could be granted. Accordingly, this Court

found that the appellants are entitled by just compensation of Rs.3,38,800/- along with interest at 7.5% per annum as granted by the Tribunal taking into consideration of the prevailing bank interest at the time of the award. The respondents 1 and 2 are jointly and severally liable to pay total compensation amount of Rs.3,38,800/- along with interest at 7.5% per annum to the appellants within a period of two months from the date of receipt of a copy of this order. Out of the total compensation, the first appellant being wife entitled for Rs.2,00,000/- and permitted to withdraw Rs.1,00,000/- with proportionate costs and interest (including the amount, if any, she has already been withdrawn) and the balance amount should be kept in any nationalized bank for a period of two years and she is entitled to withdraw monthly interest thereon for her expenses. The second appellant is entitled for the remaining amount of Rs.1,38,800/- towards her share and same shall be kept in any nationalized Bank still she attains majority. The first appellant is entitled to withdraw the monthly interest thereon to meet the expenses of minor. Accordingly, the impugned award and decree is modified, as indicated above.

Accordingly, the appeal is partly allowed. No order as to costs.

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

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**JUSTICE M. GANGA RAO**

Dated 7<sup>th</sup> March, 2019.  
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**HONOURABLE SRI JUSTICE M. GANGA RAO**

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**Dated 07.03.2019**  
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