

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No. 837 of 2010

JUDGMENT:

This appeal is arising out of the order dated 02.07.2009 in O.P. No. 763 of 2004 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge-FTC-III), at Khammam. The 2nd respondent-Insurance Company in the O.P. is the appellant herein.

2. Brief facts of the case are that on 29.09.2003 the deceased boarded autorickshaw bearing No.AP-20V-5234 at Manchukonda and proceeding towards Khammam. When the auto rickshaw reached near Industrial Area, Khammam, on Khammam-Yellandu R&B Road, at about 12:30 PM, the driver of the auto drove it in a rash and negligent manner and dashed against the opposite auto rickshaw bearing No. AP-20V-5102. As a result, the deceased sustained injuries and died. The deceased was aged about 30 years by the date of accident and he was a Coolie (labour) earning Rs.100/- per day. Alleging that the accident occurred due to the rash and negligent driving by the driver of the auto bearing No.AP-20V-5234, the claimants, who are the legal heirs of the deceased, filed the claim petition seeking compensation of Rs.3,00,000/- against respondents 1 and 2, the owner and the insurer, respectively, of the crime vehicle.

3. The Tribunal, vide the impugned order, awarded compensation of Rs.5,42,000/- against respondents 1 and 2. Contending that the quantum of compensation awarded by the Tribunal is highly excessive, and that there is

contributory negligence on the part of the opposite auto rickshaw bearing No.AP-20V-5102, Insurance company filed this appeal.

4. Heard Sri M. Phalguna Rao for the appellant-Insurance company and Smt. Vanga Anita, for the respondents-claimants 1 to 5.

5. The points for consideration in this appeal are:

- (i) ***Whether there is contributory negligence on the part of the autorickshaw bearing No.AP-20V-5102.***
- (ii) ***Whether the owner and insurer of the auto rickshaw bearing No.AP-20V-5102 are necessary parties.***
- (iii) ***Whether the income of the deceased taken by the Tribunal at Rs.150/- per day is excessive?***

6. Learned counsel for the appellant-insurance company submits that there is contributory negligence on the part of both the vehicles, but the Tribunal fixed the liability only against the insurer of the auto bearing No.AP-20V-5234.

7. As far as the findings of the Tribunal with regard to the contributory negligence is concerned, the Tribunal, placing reliance on the contents of Ex.A2-Certified Copy of the Chargesheet and the Police investigation, came to the conclusion that there is contributory negligence on the part of the driver of the auto bearing No.AP-20V-5234. The Tribunal also placed reliance on the evidence of PW1 and contents of Exs.A1 and A2 and came to the conclusion that there is contributory negligence on the part of the autorickshaw bearing No.AP-20V-5234. Therefore, I do not see any valid

grounds to interfere with the findings of the Tribunal in respect of fixing the liability on the part of the auto rickshaw bearing No.AP-20V-5234.

8. The other contention raised by the learned counsel for the appellant is that the owner and insurer of the auto bearing No.AP-20V-5102 were not added as parties to the claim petition.

9. Since the Tribunal has fixed the liability against the auto bearing No.AP-20V-5234, there is no need to add the owner and insurer of auto rickshaw bearing No.AP-20V-5102 as necessary parties to the claim petition.

10. Learned counsel for the appellant mainly contended that the claimants mentioned in the petition that the deceased was earning Rs.100/- per day, but whereas the Tribunal has taken the income of the deceased as Rs.150/- per day. It is also contended that the claim was for Rs.3,00,000/-, but the Tribunal awarded Rs.5,42,000/- which is highly excessive.

11. As far as the income of the deceased is concerned, PW1 deposed that the deceased was earning Rs.150/- per day by attending to coolie work. There is no contra evidence on record to show that he was not earning Rs.150/- per day, and therefore I do not see any force in this contention raised by the learned counsel for the appellant.

12. As far as the quantum of compensation is concerned, no doubt, the Tribunal awarded more than the amount claimed in the claim petition, but in view of the decision rendered by the Hon'ble Supreme Court in **Nagappa v.**

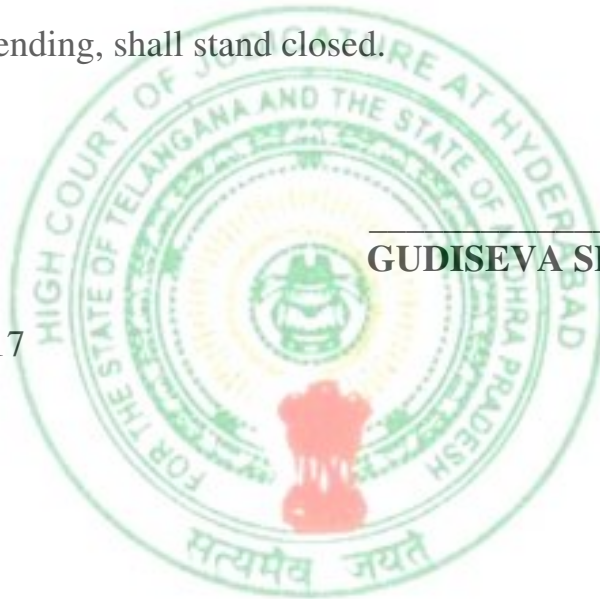
Gurudayal Singh¹, the Tribunal has to award just and reasonable compensation. The Tribunal can award compensation reasonably though it exceeds the claim of the claimants. In this case the Tribunal awarded more than the claim made by the claimants basing on the facts and circumstances of this case.

13. Having regard to the facts and circumstances of the case, I do not see any merit in this appeal and the appeal is liable to be dismissed.

14. Accordingly, the appeal is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

13th February, 2017
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¹ (2003) 2 SCC 274

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