THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No.3426 OF 2014

JUDGMENT:

1. This Appeal is filed by the appellants/claimants, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), aggrieved by the award, dated 03.05.2010, passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Additional District Judge-cum-Judge, Family Court, Guntur (for short, 'the Tribunal'), in M.V.O.P. No.558 of 2009; where under and whereby the Tribunal granted a compensation of Rs.3,00,000/-, against the original claim of Rs.3,00,000/-, for the death of the deceased *viz.,* Vankayalapati Ramaiah, who died in the accident on 08.03.2009.

2. The appellants/claimants filed the Claim Petition, under Section 163-A of the Act alleging that on 08.03.2009, while the deceased along with one Kotaiah attended coolie works at Kondaveedu and in return journey, came to Ganeshunipadu and boarded the offending Auto bearing registration No.AP-07-W-5313 to go to Phirangipuram, at about 10:30 a.m. when they reached outskirts of Phirangipuram then a cyclist came across the Auto and in the process of saving the cyclist, the auto met with the accident as it was driven in high speed and negligent manner by its driver. As a result of which, the deceased fell down and sustained grievous injuries and was shifted to Phirangipuram for first-aid and later to Government General Hospital, Guntur, for better treatment and succumbed to the injuries. On complaint of the accident, Phirangipuram Police registered a case in Crime No.24 of 2009 under Section 304-A of I.P.C. against the driver of the Auto. Due to the sudden demise of the deceased in the accident, the appellants sustained huge loss of earnings

and also dependency, filed the claim petition claiming compensation of Rs.3,00,000/-.

3. The 1st respondent-owner of the Auto filed counter denying the averments of the petition, admitted ownership of the auto and the auto got insured with the 2nd respondent-insurer, and further denied that the auto was being driven in a rash and negligent manner by its driver and he has to be indemnified by the 2nd respondent by virtue of the valid insurance policy existing as on the date of accident.

4. The 2nd respondent-insurer of the auto filed counter denying the averments of the petition contending that the auto was overloaded and driven in violation of the terms and conditions of the permit and as such breached the terms and conditions of the policy. It was further contended that there was no rashness and negligence on the part of the driver of the Auto and it is purely an act of God resulted in the accident and finally contended that the claim is excessive and exorbitant.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of Auto rickshaw bearing No.AP 07-W-5313?
2. Whether the petitioners are entitled to the compensation, if so, from whom?
3. To what relief?

6. On behalf of the appellants, 1st appellant was examined as PW.1 and also got examined one V.Kotaiah as PW.2 in support of their claim and Exs.A.1 to A-5 were marked. On behalf of the respondents,

1st respondent was examined as RW.1 but no documents were got marked on their behalf.

7. The Tribunal, based on the evidence of PWs.1 and 2, coupled with the oral and documentary evidence *i.e.,* Exs.A-1 to A-5, came to the conclusion that the accident occurred due to rash and negligent driving of the offending vehicle by its driver.

8. The Tribunal has taken the notional income of the deceased at Rs.2,400/- per month and after deducted 1/3rd therefrom towards personal expenses, the Tribunal arrived the net income of the deceased as Rs.1,600/- per month and Rs.19,200/- per annum. After applying the multiplier '18' as per the ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[1], the Tribunal arrived the loss of dependency at Rs.3.45.600/-. However, as the claim of the appellants before the Tribunal was only Rs.3,00,000/-, the Tribunal restricted the compensation to Rs.3,00,000/- and accordingly granted the compensation of Rs.3,00,000/-. Aggrieved by the same, the present appeal came to be filed.

9. Learned counsel for the appellant mainly contended that the Motor Vehicles Act being a beneficial legislation, the Tribunal ought not have restricted the compensation amount to the claim amount. He would further contend that the appellants are also entitled for compensation under conventional heads. Accordingly, he seeks enhancement of the compensation.

10. Per contra, learned counsel for the respondent-Insurance Company made his submissions sustaining the impugned order passed by the Tribunal.

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[1] 2009 (6) SCC 121

11. Having perused the material on record, more particularly, the impugned order, this Court is of the considered view that in view of the ratio laid down by the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[2], in M.V. Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the appellants are entitled for the entire compensation amount arrived by the Tribunal irrespective of their claim. However, the appellants-claimants shall pay the Court Fee for the excess amount granted. In addition to the compensation granted by the Tribunal, the appellants are also entitled for Rs.70,000/- under conventional heads in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[3]. Accordingly, the compensation granted by the Tribunal of Rs.3,00,000/- is hereby enhanced to Rs.4,15,600/- (Rs.3,45,600/- + Rs.70,000/-) along with costs and interest at 6.5% per annum from the date of petition till the date of realization.

12. Out of the compensation of Rs.4,15,600/-, the first appellant is entitled for Rs.1,15,600/- with proportionate costs and interest and the remaining appellants are entitled for Rs.1 lakh each along with proportionate costs and interest. The respondent-Insurance Company shall deposit the entire compensation amount, after deducting the amounts already deposited if any, to the credit of the O.P. before the Tribunal, within a period of two months from the date of receipt of a copy of this order. On such deposit, appellants 1 and 4 are at liberty to withdraw their respective share amounts, subject to payment of Court Fee. However, the share amounts of the minors shall be kept in fixed deposits till they attain majority.

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[2] (2003) 2 SCC 274
[3] 2017 Law Suit (SC) 1093

13. Accordingly, the appeal is allowed in part. There shall be no order as to costs.

14. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

M.GANGA RAO, J

Date: 21.12.2018.
Dsh/sur

THE HON'BLE SRI JUSTICE M.GANGA RAO

<u>M.A.C.M.A. No.3426 OF 2014</u>

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