

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.2423 OF 2013 AND 1737 OF 2014

COMMON ORDER:

M.A.C.M.A.No.2423 of 2013 is filed by the TSRTC and M.A.C.M.A.No.1737 of 2014 is filed by the claimants challenging the order dated 25-04-2013 passed in M.V.O.P.No.1313 of 2012, by the Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal).

2. Since both the appeals arise out of a common accident, they are being disposed of by this common order.

3. The brief facts of the case are that on 29-01-2012 at about 5.30 PM., while Bodas Srikanth (hereinafter referred to as deceased), along with other person by name David, was proceeding from Hyderabad towards Yadagiri Gutta on a pulsar motorcycle bearing No.AP10AY 2251, and when they reached a palace near Sri Chaitanya College in Avushapur village limits, the RTC bus bearing No.AP10Z 8358 being driven by its driver in a rash and negligent manner with high speed, dashed the motorcycle, as a result of which, both of them received grievous injuries and died on the spot. The claimants filed the above O.P., seeking compensation of Rs.8,00,000/- for the death of the deceased.

4. The TSRTC filed a counter denying the allegations in the claim petition and contended that the accident occurred due to the negligence of the deceased.

5. After considering the evidence produced by the parties, the Tribunal held that the accident was occurred due to the rash and negligent driving of the driver of the bus and granted a compensation of Rs.6,09,000/- as against the claim of Rs.8,00,000/-.

6. Heard.

7. Sri P.Ramakrishna Reddy, learned standing counsel appearing for the TSRTC, submits that though the occupation and income of the deceased has not been established, the Tribunal fixed the notional income of the deceased at Rs.5,500/- without any basis and awarded the compensation accordingly.

8. Per contra, the learned counsel appearing for the claimants, submits that though there is evidence of P.W.2 to the effect that the deceased was earning not less than Rs.10,000/- per month as a Painter, the Tribunal has fixed the notional income at Rs.5,500/- only and sought to enhance the compensation by fixing the income of the deceased at Rs.10,000/- per month. In this regard, he relied upon a decision reported in **Shivakumar.M V. Bengaluru Metropolitan Transport Corporation**¹, wherein the Apex Court considered the occupation and income of a painter while awarding the compensation.

9. He further submits that insofar as conventional heads, i.e., transport, loss of estate and funeral expenses, the Tribunal has granted only Rs.15,000/- instead of Rs.30,000/-. By relying

¹ (2017) 5 SCC 79

upon the judgment of the Apex Court in **National Insurance Co. Ltd. V. Pranay Sethi**² and **Hem Raj V. Oriental Insurance Co.Ltd.**³, he submits that the claimants are entitled to future prospects of 50% and 7.5% towards interest.

10. Insofar as fixing of notional income of the deceased at Rs.5,500/- per month is concerned, as there is no proof of income, the Tribunal taking into consideration of the profession of the deceased as painter, has arrived to that figure, which appears to be quite reasonable. In the light of the above judgments, I am inclined to grant an addition of 50% on the income of the deceased towards future prospects and 7.5% towards interest. If calculated, the loss of income comes to Rs.8,91,000/- (4,125/- x 12 x 18). Apart from the same, I am inclined to grant Rs.30,000/- towards other conventional heads. Hence, the total compensation comes to Rs.9,21,000/-.

11. Though the claimants made a claim for Rs.8,00,000/- in their claim petition, I am inclined to grant total compensation of Rs.9,21,000/- by following the judgment of the Apex Court in **Nagappa V. Gurudayal Singh**⁴, wherein it has been held that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be 'just compensation', but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

² 2017 ACJ 2700 (SC)

³ 2018 ACJ 5

⁴ 2003 (2) SCC 274

12. Except granting of above amounts, the award of the Tribunal remain unchanged in all other respects. The claimants are directed to pay the deficit court fee on the enhanced amount.

13. Accordingly, M.A.C.M.A. No.2423 of 2013 is dismissed and M.A.C.M.A.No.1737 of 2014 is allowed by enhancing the compensation amount, as awarded by the Tribunal, from Rs.6,09,000/- to Rs.9,21,000/-. Miscellaneous petitions pending if any shall stand closed. No order as to costs

T.AMARNATH GOUD, J

Date: 19-11-2018
Shr

