

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1581 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 24.01.2008 passed in M.V.O.P.No.357 of 2007 by the Motor Accidents Claims Tribunal (District Judge) at Khammam (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the husband and appellant No.2 is the daughter of the deceased, Jalli Yellamma, respectively. On 22.11.2005, the deceased attended her coolie work on tractor bearing No.AP4C 3649, and while returning to her house at about 6.30 pm., on the way at Patha Irsulapuram stage, the driver of the said tractor drove it in a rash and negligent manner with high speed, due to which, the deceased who sat beside the driver of the tractor, fell down on the road and sustained grievous injuries all over the body. While shifting the deceased to the hospital, on the way, she succumbed to injuries. The claimants filed aforesaid OP claiming compensation of Rs.3,00,000/- against respondent Nos.1 and 2, owner and insurer of the tractor, respectively, for the death of the deceased.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and awarded total compensation of Rs.2,14,000/-, with interest @ 7.5% per annum, fixing the liability against respondent No.1 alone. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. The Tribunal granted Rs.2,04,000/- towards loss of dependency, which is reasonable and does not need any interference by this Court. Insofar as granting of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses is concerned, in the light of the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹, this Court is inclined to grant Rs.70,000/- towards conventional heads. Apart from the same, appellant No.2, being the daughter of the deceased, is entitled to receive a sum of Rs.16,000/- towards loss of love and affection. Hence, the total compensation comes to Rs.3,00,000/- (Rs.2,04,000/- + Rs.70,000/- + Rs.16,000/-).

7. Insofar as Tribunal fixing the liability on respondent No.1 to pay the compensation is concerned, on the basis of the evidence, the Tribunal came to the conclusion that the deceased was sitting

¹ 2017(6) ALD 170 (SC)

by the side of the driver of the tractor, which amounts to violation of terms and conditions of the policy. Accordingly, the Tribunal exonerated the liability of respondent No.2 and directed respondent No.1 to pay the compensation amount. In the similar circumstances, the Hon'ble Supreme Court in **Shivaraj Vs. Rajendra²**, directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle. In view of the same, respondent No.2 is directed to pay the compensation amount at the first instance and recover the same from respondent No.1.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,14,000/- to Rs.3,00,000/-. Respondent No.2-insurance company is directed to pay the compensation amount at the first instance and recover the same from respondent No.1-owner of the crime vehicle. The enhanced amount shall carry interest @ 7.5% per annum. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 17.06.2019
TJMR

² 2018 AIR (SC) 4252