THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.821 OF 2006

JUDGMENT:

This appeal is filed by the appellant/2nd respondent/insurance company aggrieved by the Order and Decree dated 21.10.2005 passed in O.P.No.765 of 2004 by the IV Additional Metropolitan Sessions Judge, Hyderabad-cum-XVIII Additional Chief Judge, Hyderabad (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that petitioners 1 & 2 are the parents and the 3rd petitioner is the brother of the deceased-Habeeb Ur Rahman. On 03.08.2003, the deceased was traveling by Qualis vehicle bearing No.AP 9L 1001. The driver of the said Qualis while coming from Rayadurgam towards Hyderabad lost control over the vehicle at 45 k.m. stone on the National High Way No.7 in Shad Nagar Village limits at about 11.45 p.m. and dashed against the stationed lorry bearing No.AP 12B 6531 from its backside, resulting in injuries to the deceased and injuries to the other inmates of the Qualis. The deceased died while being shifted to the Hospital. The accident occurred due to the rash and negligent driving of the driver of the offending Qualis. The deceased was aged

about 24 years and doing cloth business and earning Rs.10,000/- per month at the time of the accident. Due to the untimely death of the deceased, the petitioners have lost their love and affection and only source of dependence. Hence, the petitioners filed the claim petition claiming compensation of Rs.5,00,000/-, payable by both the respondents, being the owner and insurer of the offending Qualis.

4. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 & 2 and R.W.1 and the documentary evidence of Exs.A-1 to A-5 & Ex.B-1, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending Qualis and awarded total compensation of Rs.2,59,500/- only to petitioners 1 & 2, i.e., Rs.2,55,000/- towards loss of income, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by both the respondents. Since the 3rd petitioner is earning Rs.2,000/- per month, the Court below has not considered him as dependent on the deceased. Aggrieved by the said order, the appellant/2nd respondent/insurance company filed the present appeal.

6. Heard Sri Ramachandra Reddy Gadi, learned standing counsel for the appellant/2nd respondent/insurance company and Sri M.T.Ghori, learned counsel appearing for respondents 1 to 3/claimants. Since notice sent to the 4th respondent was returned unserved with an endorsement "party is left from the addressee – return to sender", this Court feels that the notice is duly served and accordingly, the matter is heard and disposed of.

7. As per the evidence of P.W.1, the offending Qualis belongs to the 1st respondent and the same has been taken by the deceased on hire basis on the date of the accident.

8. The case of the appellant/2nd respondent/insurance company is that there is a gross violation of the insurance policy since the private owned vehicle cannot be used on hire or reward purpose and thus, the appellant/insurance company is not liable to pay the compensation and the liability cannot be fastened upon the appellant/insurance company.

9. During the course of arguments, Sri Ramachandra Reddy Gadi, learned standing counsel for the appellant, contended that in para 16, the Court below has computed the compensation, but the deduction of 50% towards personal expenses of the deceased has not been given effect to, since the deceased was unmarried at the time of the accident and thus, the compensation has to be reduced proportionately in terms of

deduction towards personal expenses as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**[1].

10. Having regard to the submissions made by the learned standing counsel for the appellant/insurance company, by deducting 50% from the notional income of Rs.15,000/- per annum of the deceased, the actual notional income comes to Rs.7,500/- (Rs.15,000/- - Rs.7,500/-). Since the deceased was aged about 24 years at the time of the accident, the appropriate multiplier applicable as per **Sarla Verma**'s case (supra) is '18'. Therefore, the amount under the head of loss of income comes to Rs.1,35,000/- (Rs.7,500/- x 18). Except the said modification, rest of the award remains unchanged. Therefore, the total compensation comes to Rs.1,39,500/- (Rs.1,35,000/- + Rs.2,000/- + Rs.2,500/-).

11. Admittedly, on fair reading of para 13 of the order, the Court below has categorically observed that in the light of the policy covering the third parties, the 2nd respondent/insurance company cannot dis-own its liability to pay the compensation, but then in the light of the fact that the 1st respondent/owner has been using the crime vehicle in contravention of the terms and conditions under Ex.B-1, the 2nd respondent/insurance company is entitled to recover the amount of compensation paid on behalf of the 1st respondent/owner from the 1st

[1] (2009) 6 SCC 121

respondent/owner. But the said observation is not found its place in the judgment at para 17 and also in the decree. In the decree and judgment, it is indicated that the 2nd respondent/insurance company has to pay the amount, but insofar as the recovery is concerned, there is no indication about the same in the judgment and decree. Hence, the 2nd respondent/insurance company shall pay the compensation and recover the same from the 1st respondent/owner.

12. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by reducing the compensation amount awarded by the Court below from Rs.2,59,500/- to Rs.1,39,000/- with interest @ 7.5% per annum from the date of petition till the date of realization to respondents 1 & 2/claimants 1 & 2 only. The appellant/2nd respondent/insurance company shall pay the compensation amount to the respondents 1 & 2/claimants 1 & 2 in the first instance, and recover the same from the 4th respondent/owner of the offending Qualis. The appellant/2nd respondent/insurance company is directed to deposit the said compensation amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the respondents 1 & 2/claimants 1 & 2 are permitted to withdraw their respective shares as awarded by the Court below. The appellant/2nd respondent/insurance company shall recover the said

compensation amount from the 4th respondent/owner of the offending Qualis. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

T.AMARNATH GOUD, J

Date: 31st October, 2019

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