

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1291 OF 2008

AND

CROSS OBJECTIONS (SR) No.35426 of 2008

COMMON JUDGMENT:

This appeal is preferred by the appellant/insurance company questioning the order of the Motor Accidents Claims Tribunal (District Judge), Nizamabad (for short, the Tribunal) in O.P.No.601 of 2005 dated 28.09.2007. The respondents 1 & 2/claimants also filed cross-objections being aggrieved by the order of the Tribunal.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

3. The brief facts of the case are that the petitioners are the parents of the deceased-Rizwan. On 02.11.2003 the deceased was coming on his bicycle from Vijay Sai School, at about 01.10 p.m. when reached near Railway Gate, Bodhan on Bodhan to Nizamsagar Road, one lorry bearing No.AP 16/U 9367 driven by its driver at high speed in rash and negligent manner and dashed against the deceased due to which the deceased died on the spot. Prior to the accident, the deceased was hale and healthy, he was aged 16 years, he was student and also doing fruits business and was earning Rs.10,000/- per month and was contributing his earnings to the petitioners. On account of sudden death of the deceased, the petitioners are put to irreparable loss and hardship and that the petitioners lost their son. The accident took place due to the rash and negligent

driving of the driver of the offending lorry and therefore, respondents 1 & 2, who are owner and insurer of the offending lorry, are jointly and severally liable to pay compensation of Rs.4,00,000/-.

4. In the claim petition, the 1st respondent remained *ex parte* and the 2nd respondent filed written statement denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

5. 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 drivers of the offending lorry and awarded total compensation of Rs.2,80,000/- with interest @ 7.5% per annum i.e., Rs.2,25,000/- towards loss of contribution to the family of deceased, Rs.5,000/- towards transport charges and funeral expenses, and Rs.50,000/- towards loss of love and affection. Aggrieved by the said order, the insurance company filed the present appeal and the claimants filed the cross objections.

6. Heard.

7. A perusal of the order reveals that the Tribunal passed a well considered order by taking into consideration all the aspects and as against the claim of Rs.4,00,000/-, the Tribunal awarded an amount of Rs.2,80,000/- with interest @ 7.5% per annum.

The Tribunal has framed the Issue No.1 as to whether the accident has taken place due to rash and negligent driving of lorry bearing No.AP-16/U-9367 by its driver, to which the Tribunal has categorically stated that the accident has occurred due to the rash and negligent driving of the driver of the offending lorry and has answered in favour of the claimants. With regard to Issue No.2 as to whether the claimants are entitled for compensation, if so, to what amount and against whom is concerned, in the light of the decided case laws of the Apex Court, under the heads of conventional charges and love and affection, the claimants are entitled for more compensation. However, since this is an appeal filed by the insurance company, this Court is not inclined to go into the other issues and this Court finds that the compensation awarded by the Tribunal is just and reasonable. Therefore, I see no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

8. Insofar as the cross-objections are concerned, though the claim is made for Rs.4,00,000/-, it is a bounden duty of this Court to award just and proper compensation. In the award, the Tribunal has awarded an amount of Rs.5,000/- under the head of transportation charges and funeral expenses of the deceased, but as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹, this Court feels just and reasonable to award an amount of Rs.30,000/- towards

¹ 2017(6) ALD 170 (SC)

conventional heads since the deceased was an unmarried person. The Tribunal has awarded an amount of Rs.50,000/- under the head of love and affection, but in view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**², the claimants, being the parents of the deceased, are entitled to Rs.40,000/- each under the head of Filial Consortium. Except the said modification, the order of the Tribunal remains unchanged. Thus, the total compensation under various heads comes as under:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of contribution	Rs.2,25,000/-	Rs.2,25,000/-
02.	Transportation charges and funeral expenses	Rs.5,000/-	Rs.30,000/- (Conventional charges)
03.	Loss of love and affection	50,000/-	Rs.80,000/-
TOTAL		Rs.2,80,000/-	Rs.3,35,000/-

Insofar as the interest is concerned, interest of 7.5% shall be computed on the enhanced amount.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is dismissed and the Cross Objections is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,80,0000/- to Rs.3,35,000/- . The enhanced amount shall carry interest @ 7.5% per annum. No costs.

² 2018 LawSuit (SC) 904

Miscellaneous petitions pending, if any, shall stand dismissed.

T.AMARNATH GOUD, J

Date: 15th July, 2019

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