

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.2425 of 2012

JUDGMENT:

This appeal is filed by the Insurance company, who is 2nd respondent in the claim petition, under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy (for short 'the Tribunal), in M.V.O.P.No.225 of 2009 dated 25.10.2010 though there is endorsement regarding the order date that MVOP.No.225 of 2009 is disposed of on 20.10.2010 and another on 25.10.2010 as per the endorsement of the order dated 27.01.2011 in IA.No.137 of 2011. Since the order dated 27.01.2011 in IA.No.137 of 2011 not available on record, with the consent of both the parties, the appeal itself is heard taking into consideration the order dated 25.10.2010 in MVOP.No.225 of 2009.

2. The claimants who are the dependants of the deceased-Nandyala Satyanarayana, who died in an accident dated 21.01.2009 at about 09.45 PM in the outskirts of the Mambapur, due to the rash and negligent driving of the driver of Hero Honda motor cycle registration No.AP-28-AK-4372. The deceased sustained injuries and he was shifted to Sriram Hospital, but he succumbed to the injuries. Aggrieved thereby the claimants preferred OP as the death caused by the rash and negligent driving of the driver of the motorcycle and the 2nd respondent-insurance company is liable to pay compensation.

3. According to the claimants, the age of the deceased is 45 years as per Ex.A9-SSC school certificate and the deceased is

working in Neuland Company, Bonthapally and drawing a salary of Rs.15,703/- and made a claim for Rs.15,00,000/- and the Tribunal awarded a sum of Rs.13,82,000/-. Aggrieved thereby, the insurance company has preferred the present appeal.

4. The Tribunal examined PWs.1 to 3 and marked Exs.A1 to A12 on behalf of the petitioners/claimants and Ex.B1-insurance police for 2nd respondent-insurance company and framed the issues i.e., (i) Whether the accident occurred due to rash and negligent driving of the driver of the crime vehicle?, (ii) Whether the petitioners are entitled for compensation as prayed for, if so, at what amount and from whom? and (iii) to what result?

5. With regard to issue No.1, the Tribunal relied upon the evidence of PW.2 eye witness and the manner in which the witness has explained the incident and in the light of Exs.A1 & A2 the certified copies of FIR and charge sheet, the Tribunal has come to the conclusion that the accident has taken place because of the rash and negligent driving of the crime motorcycle and the issue has been answered in favour of the claimants and against the respondent. To this extent both sides have no dispute, but in so far as issue No.2 for computing the compensation is concerned, the Tribunal has taken into consideration the monthly salary of Rs.13,000/- per month in the light of future hike in the sale as per the evidence of PW.3. This presumption cannot be considered however basing on Ex.A11-salary certificate the gross salary is Rs.11,532/- and the deduction is Rs.1,109/- and thus the net salary of the deceased is Rs.10,423/- per month. Since there are 5

dependents, the deduction which is applicable is $1/4^{\text{th}}$ towards personal expenses of the deceased out of his monthly salary and in view of the **Sarla Varma Vs. Delhi Transport Corporation**¹ the multiplier applicable between the age group of 41-45 is '14' and since the age of deceased is 45 years and is having source of income and in the light of he being employed as per PW.3- Assistant Manager of M/s. Newlands Laboratory the future prospects is considered at 30%, which comes to Rs.10,423/- + Rs.3,127 (30% of Rs.10,423/-) = Rs.13,550/- and $1/4^{\text{th}}$ has to be deducted towards personal expenses of the deceased which comes to Rs.13,550/- (-) Rs.3,387/- ($1/4^{\text{th}}$ of Rs.13,550/-) = Rs.10,163/- and thus the loss of earnings is computed as Rs.10,163/- x 12 x 14 = Rs.17,07,384/- and in the light of **National Insurance Company Limited Vs. Pranay Sethi**², the claimants are entitled to conventional heads at Rs.70,000/- and as per **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram**³ Rs.50,000/- each for 2 children towards love and affection comes to Rs.1,00,000/- and Rs.40,000/- each for parents of the deceased towards filial comes to Rs.80,000/-, in all compensation comes to Rs.19,57,384/- so far as this amount concerned which though appears to be just and what the Tribunal awarded of Rs.13,82,000/- is low. Since no cross-objections or independent appeal is filed by the claimants, as laid down by the Apex Court in

¹ 2009 (6) SCC 121

² 2017 (6) SCC 170

³ 2018 Lawsuit (SC) 904

Ranjana Prakash Vs. Divisional Manager⁴, this Court is not inclined to go into the issue of enhancement.

6. Accordingly and in the result, this Appeal is disposed of by reducing the rate of interest to 7.5% per annum from 8% per annum from the date of petition till the date of realization. No costs.

Miscellaneous petitions if any shall stand closed.

Date: 19.08.2019
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T.AMARNATH GOUD,J



⁴ 2011(8) Scale 240