

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO.79 OF 2019

JUDGMENT:

This appeal is directed by the claimants against the order and decree dated 13.03.2018 passed by the Motor Accidents Claims Tribunal-cum-V-Additional District Judge, Medak at Sangareddy (for short 'the Tribunal'), in O.P.No.239 of 2016, whereby the tribunal granted compensation of Rs.15,00,000/- in a motor vehicle accident that occurred on 23.05.2016 at about 08.00 am when the deceased Mohd.Ismail was going on his motor cycle towards Bidar from Hyderabad, he reached in front of Bablu hotel near RTC Check Post, Zaheerabad on National High Way No.65, the driver of lorry container bearing No.TS 08 UB 2210 came in same direction at high speed in a rash and negligent manner, dashed the deceased from back side, for which the deceased sustained bleeding injuries to his right leg above thigh, immediately shifted to the Government Hospital, Zaheerabad for treatment and after first aid, he was shifted to Osmania Government Hospital, Hyderabad for further treatment, while undergoing treatment died on 26.05.2016. as against claim of Rs.15,00,000/-.

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. Respondents 1 and 3 filed counters denying claim petition.

4. In order to prove the case of the claimants, PWs.1 to 3 were examined and marked Exs.A1 to A.6 on their behalf. No oral evidence was adduced on behalf of respondents, but marked Ex.B.1 copy of policy. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the deceased namely Md.Ismail died in the motor vehicle accident occurred on 23.05.2016 due to rash and negligent driving of the driver of lorry container bearing No. TS 08 UB 2210 by its driver?
- 2) Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
- 3) To what relief?

5. There is no dispute with regard to the involvement of the vehicle and manner of accident. Claimant No.1 is the wife, Claimant Nos.2, 3 and 4 are children and Claimants 5 and 6 are mother and father of the deceased. After appreciating the facts and in the light of the decisions of the Apex Court, the tribunal opined that the claimants are entitled for Rs.18,63,000/-, but in view of the claim being made only for Rs.15,00,000/-, the same is restricted. Aggrieved thereby, the present appeal is preferred seeking enhancement of compensation. It is well settled law that

though the claim is made for Rs.15,00,000/- in order to grant just and proper compensation and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**¹ the compensation awarded can be more than the claim. Under the provisions of M.V. Act, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is it should be 'Just' compensation. The order passed by the is well considered in all other aspects.

6. Learned standing counsel for insurance company contended that as per the decision of the Apex Court in **National Insurance Company Limited v Pranay Sethi**² the claimants are entitled for Rs.70,000/- towards conventional heads instead of Rs.1,00,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses.

7. In view of the decision of the Apex Court in **Pranay Sethi** referred supra, Rs.70,000/- is granted towards conventional heads in the place of Rs.1,00,000/- towards loss

¹ 2003(2) SCC 274

² 2017(6) 170 (SC)

of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram**³, the three minor children of the deceased are entitled for Rs.50,000/- each and the mother and father of the deceased are entitled for Rs.40,000/- as filial. Thus, the total compensation comes to Rs.20,29,000/- (Rs.17,29,000/- + Rs.70,000/- + Rs.1,50,000/- + Rs.80,000/-) with interest @ 7.5% per annum from the date of petition till the date of realization. Respondents are directed to deposit the compensation amount jointly and severally within three months from the date of this judgment. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. The claimants have to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimants cannot be permitted to execute for the enhanced amount.

8. In view of the above, the appeal is allowed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 26.09.2019
kvrn

³ 2018 Law Suit (SC) 904