THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1523 OF 2006
AND
Cross Objections (SR) No.38446 OF 2006

COMMON JUDGMENT:

MACMA No.1523 of 2006 is filed by the insurance company and Cross Objections are filed by the claimants against the judgment and decree, dated 14.12.2005 passed in O.P.No.282 of 2001 by the I Additional Motor Accidents Claims Tribunal, Nizamabad (for short 'the Tribunal).

2. Since the appeal and cross objections arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. The 1st claimant is the wife and the 2nd claimant is the mother of the deceased.

5. The brief facts are that on 14.07.1999 at about 8.00 PM the deceased Sarkondavar Balaji, 25 years and was working as Attender in Panchayat Samithy Office, Degloor while travelling in an auto bearing No.AP 10 T 5117 from Degloor towards Madnoor side and when it reached at Madnoor village on Degloor to Madnoor road, the driver of the auto could not see the parked lorry bearing No. MWZ 5437 without signals, on the middle of the road, touched the lorry from behind, for which the deceased received crush

injuries and multiple fractures and was admitted in Government Hospital, Degloor and died on the same day.

6. Before the tribunal, respondent No. 2-insurance company contested denying the claim petition.

7. In order to prove the case of the claimants before the tribunal, PWs.1 to 3 were examined and marked Exs.A1 to A.4 on their behalf. Ex.B.1-copy of policy and Ex.B.2 c.c. of charge sheet were marked on behalf of respondents. No oral evidence is adduced on behalf of the respondents.

8. On considering the oral and documentary evidence, the tribunal granted compensation of Rs.10,61,860/-, but restricted to Rs.5,00,000/- as the claimants claimed only Rs.5,00,000/- with interest at 9% per annum from the date of petition till the date of realisation and that the driver of the crime lorry is responsible for the accident, the owner of the crime lorry is vicariously liable to pay the compensation and since the crime vehicle is insured with the 2nd respondent, the tribunal directed the 2nd respondent to pay the compensation.

9. Learned standing counsel appearing for the insurance company contended that the auto is not insured and that there is no fault on the part of the lorry since the same is parked and the all precautions were taken, but for the negligence of the auto, i.e came from back side in rash and negligent manner and dashed the stationed and that the compensation granted by the tribunal is

erroneous and that there is contributory negligence and hence, prayed to set aside the order of the tribunal by allowing the appeal.

10. Per contra, learned counsel for the claimants contended that though the tribunal awarded compensation of Rs.10,61,860/-, restricted to Rs..5,00,000/- as the claimed amount and hence, prayed to grant just compensation.

11. It is the case of death. There is no dispute with regard to the manner of accident and involvement of the vehicle. As per the evidence of PW.2, eye witness and Ex.B.2 – copy of charge sheet, placed on record by the insurance company, that the lorry was stopped and it was found on the centre of the road and no precautions were taken and on the fateful day, an auto came and dashed the lorry and hence, fastened the liability on the 2nd respondent – insurance company. It is assumed for a moment, even if the lorry was stopped in the centre of the road without precautions, nothing prevented the driver of the auto to drive it by taking proper due care to avoid the accident. Therefore, 10% negligence can be attributed to the driver of the auto and 90% negligence can be attributed to the driver of the lorry.

12. With regard to determine the compensation is concerned, as per the evidence of PW.1 and Ex.A.3- salary certificate of the deceased, the deceased working as attender in Panchayat Samithi and earning Rs.3,712/- per month and that as per Ex.A.1 post-mortem report, the age of the deceased was 25 years. The age of the deceased was 25 years as on the date of accident, as per the

decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another[1],** the relevant multiplier applicable is '18. Since the claimants are two in number, 1/3rd of his personal expenses have to be deducted. The deceased was permanent employed, as per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi[2]** the claimants are entitled for 50% future prospects and when the age of the deceased is 25 years, married, the claimants are entitled for Rs.70,000/- under conventional heads, which is just and proper. Since the 2nd claimant is mother of the deceased, as per the decision of the apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram[3],** she is entitled for Rs.40,000/- towards filial. The annual income of the deceased is Rs.44,544/- (Rs.3,712/- minus 1/3 (Rs.1,237/-) plus 50% (Rs.1,237/-) x 12). The loss of dependency comes to Rs.8,01,792/- (Rs.44,544/- x 18). Thus, the claimants are entitled for total compensation of Rs.9,11,792/- (Rs.8,01,792/- + Rs.70,000/- + Rs.40,000/-). The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of petition till the date of realisation. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. The 2nd respondent insurance company is liable to deposit 90% of the compensation amount i.e. Rs.8,20,612/- and the 3rd respondent is liable to deposit 10% of the compensation amount i.e. Rs.91,180/-. Though the claim is made for Rs.5,00,000/- in order to grant just and proper compensation

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[1] 2009 ACJ 1298
[2] 2017(6) 170 (SC)
[3] 2018 Law Suit (SC) 904

for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**[4] the compensation awarded can be more than the claim, the present appeal needs to be allowed. 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.

13. In view of the above, M.A.C.M.A. filed by the insurance company is partly allowed and Cross Objections filed by the claimants are allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

Date 12.11.2019
kvrm

[4] 2003(2) SCC 274