

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.No.382 OF 2010

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 18.7.2009 passed in O.P.No.622 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Mahabubnagar.

2 The facts that led to the filing of this appeal are as follows:

3 For the sake of convenience, the parties to this appeal, shall hereinafter, be referred to as they were arrayed before the Tribunal.

4 On 01.8.2007, the deceased boy, Nityanandam, aged about 8 years, was going from Vivekavani school along with other students in an auto bearing No.AP 22 V 8918 to his house, and on the way at about 4.30 PM when the auto reached near the lands of Ramachandraiah, the driver of the auto drove it in a rash and negligent manner, as a result, the deceased boy fell down from the auto on the road and sustained head injury and died on the spot. In connection with the said incident, a case in Cr.No.271 of 2007 was registered by Mahabubnagar Rural police. Hence the parents of the deceased boy filed the above OP claiming compensation of Rs.2,50,000/- from the respondents who are the owner and insurer of the auto respectively.

5 First respondent – driver of the auto remained *ex parte*. Second respondent filed counter denying the material averments made in the petition, *inter alia*, contending that the accident occurred due to the

negligence of the deceased – boy and that the insurance company is not liable to pay any compensation and that the compensation claimed is on higher side.

6 During the course of trial on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.9 were marked. On behalf of the second respondent – insurance company, R.Ws.1 and 2 were marked and Exs.B.1 to B.7 were marked.

7 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the auto and allowed the petition in part by awarding compensation of Rs.2,25,000/- and directed the respondent Nos.1 and 2 to deposit the same jointly and severally with interest at 7.5% p.a. Being aggrieved by the award and judgment, the insurance company filed the present appeal.

8 Heard the learned counsel for the petitioners and the learned counsel for the second respondent-insurance company.

9 The point that falls for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

10 Admittedly, the auto driver was carrying children passengers more than the permitted strength and that the finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the auto bearing No.AP 22 V 8918 became final in view of non-filing of

appeal or cross-objections by the respondent Nos.1 and 2. Hence I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 22 V 8918.

11 As regards quantum of compensation, the accident has taken place against the school going boy and having considered about the bereaved family, the loss sustained by them cannot be compensated with the compensation granted by the Tribunal. However, the Tribunal having relied upon the decision of the Hon'ble Supreme Court in **Manju Devi and Another Vs. Musafir Paswan and Another**¹, that in a case of fatal accident, if the deceased was aged about 13 years, payment of compensation 2,25,000/- is reasonable. In the instant case also, the deceased was aged about 8 years. In that context, by following the principle laid down by the Hon'ble Supreme Court, the Tribunal awarded Rs.2,25,000/- as compensation to the petitioners. Hence, for the reasons recorded by the Tribunal, I am of the considered opinion that no contra view can be taken in the instant case. Hence, I see no valid and convincing grounds to interfere with the award passed by the Tribunal with regard to the quantum of compensation payable to the petitioners.

12 In the result, the appeal is dismissed. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

TAMARNATH GOUD, J

Date: 31.7.2019.

Kvr

¹ 2005 ACJ 99