

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1377 OF 2008

JUDGMENT:

This appeal is preferred by the appellant/2nd respondent/insurance company questioning the order of the Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Nizamabad (for short, the Tribunal) in O.P.No.282 of 2005 dated 04.12.2007.

2. The brief facts of the case are that on 10.01.2004 at 2.30 P.M., the deceased-Pitla Chinna Narsimha was crossing road along with his mother, who is the 1st respondent/1st claimant, near Om Medical Hall, Dichpally, meanwhile a lorry bearing No.AP 25T 5022 (for short, 'offending vehicle'), driven by its driver in a rash and negligent manner at high speed came from Nizamabad side and dashed against the deceased Narsimha and his mother, as a result of which the deceased Narsimha died on the spot and his mother sustained injuries. The accident was occurred due to rash and negligent driving of the offending vehicle by its driver, as such the police, Dichpally, registered a case in Crime No.2 of 2004 under Sections 304-A and 337 IPC against the driver of the offending vehicle and after investigating into the matter, filed charge sheet before Additional Judicial First Class Magistrate, Nizamabad. At the time of the accident, the deceased Narsimha was aged about two and half years and he was hale and healthy. Due to sudden death of the deceased, the claimants lost love and affection of their son and also support in their old age, therefore, they are entitled for compensation of Rs.38,22,000/- towards special and general

damages, but they are claiming Rs.2,50,000/- in lump sum as compensation. The 3rd respondent is the owner of the offending vehicle and the appellant is the insurer and the insurance policy was in force on the date of the accident, as such both the 3rd respondent and the appellant are liable to pay compensation to respondents 1 & 2.

3. In the claim petition, the 3rd respondent/owner of the offending vehicle remained *ex parte*. The appellant/insurance company 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.

4. 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 driver of the offending vehicle and awarded total compensation of Rs.1,85,000/- with interest @ 7.5% per annum i.e., Rs.1,80,000/- towards compensation by relying on a decision reported in **2007 (1) ALD (SC)** since the deceased is not an earning member and Rs.5,000/- towards funeral expenses. Aggrieved by the said order, the appellant/insurance company filed the present appeal.

5. Heard.

6. 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.2,50,000/-, the Tribunal awarded an amount of Rs.1,85,000/- 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 the vehicle bearing No.AP 25T 5022 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 vehicle, i.e., the 3rd respondent and has answered in favour of the claimants and 3rd respondent and the appellant/insurance company. With regard to Issue No.2 as to whether the claimants are entitled for compensation, if so, to what just amount and from whom, in the light of the decided case laws of the Apex Court, under the heads of conventional charges and future prospects, 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.

7. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand dismissed.

T.AMARNATH GOUD, J

Date: 24th June, 2019
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