THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.833 OF 2006
AND
I.A.No.3 of 2006
(CROSS OBJECTIONS (SR) No.22964 of 2006)

COMMON JUDGMENT:

This appeal is preferred by the appellant/2nd respondent/insurance company questioning the order of the Motor Accidents Claims Tribunal (Principal District Court), at Warangal (for short, the Tribunal) in M.V.O.P.No.1167 of 2004 dated 05.12.2005. The respondents 1 to 3/claimants also filed cross-objections being aggrieved by the order of the Tribunal.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the 1st petitioner is the mother and petitioners 2 & 3 are the younger brothers of the deceased-Kothapally Kishan. The deceased was working as a labour on the tractor bearing No.AP 36A 6662 and on 03.09.2004 at about 10.00 p.m., the deceased along with other labourers was proceeding on the tractor towards Jangaon Chowrastha and by the time the tractor reached near the Petrol bunk, a lorry bearing No.AEK7956 driven by its driver in a rash and negligent manner dashed against the tractor from behind and as a result, the deceased who was sitting on the tractor fell down on the road and the lorry ran over the deceased causing his instantaneous death. The accident occurred only due to the rash and negligent driving

of the lorry driver. Due to the sudden death of the deceased, the petitioners, who were dependents on the deceased became destitutes. The 1st respondent is the owner and the respondents 2 & 3 are the insurer of the lorry. Hence, the petitioners/claimants claimed an amount of Rs.4,00,000/- as compensation payable by all the respondents.

4. In the claim petition, respondents 1 & 2 did not choose to contest the matter. The 3rd respondent filed counter 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.

5. 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 lorry and by taking into account the evidence of P.W.2-K.Sudhakar, who is a co-labourer of the deceased and an eye witness to the incident and in the light of Exs.A-1 to A-4, the Tribunal awarded total compensation of Rs.2,21,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit, i.e., Rs.2,08,000/- towards loss of dependency, Rs.3,000/- towards funeral expenses and Rs.10,000/- towards loss of estate and fastened the liability on the 2nd respondent/insurance company since it is the insurer for both the lorry and tractor. Aggrieved by the said order, the 2nd respondent/insurance company filed the present appeal and the respondents 1 to 3/claimants filed the cross objections.

6. Heard Sri P.Gopal Das, learned standing counsel appearing for the 2nd respondent/insurance company and Sri M.Krishna Reddy, learned counsel appearing for the respondents 1 to 3/claimants.

7. 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.4,00,000/-, the Tribunal awarded an amount of Rs.2,21,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. With regard to issue No.1, The Tribunal has categorically stated that the accident has occurred due to the rash and negligent driving of the driver of the offending lorry and has answered in favour of the claimants and against the insurance company. With regard to Issue No.2, 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 2nd respondent/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.

8. Insofar as the cross-objections are concerned, though the claim is made for Rs.4,00,000/-, it is a bounden duty of this Court to award just and proper compensation. Though P.W.1 stated that the deceased was working as labourer on the tractor and

earning Rs.3,000/- per month, since there is no income proof, the Tribunal has taken the monthly income of the Rs.2,000/-. In the circumstances of the case, this Court is inclined to take the monthly of the deceased as Rs.3,000/- per month. Apart from the same, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court reported in **National Insurance Co. Ltd. Vs. Pranay Sethi[1].** Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/- (40%)), and after deduction of 50% since the deceased was unmarried, the monthly income comes to Rs.2,100/- (Rs.4,200/- - Rs.2,100/- (50%)). Thus, the annual income of the deceased comes to Rs.25,200/- (Rs.2,100/- x 12 months). Since the deceased was 20 years at the time of the accident, the multiplier applicable for the age of the deceased is '18' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another[2]**. Hence, the compensation under the head 'loss of dependency' comes to Rs.4,53,600/- (Rs.25,200/- X 18). The claimants are also entitled to Rs.30,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). In the light of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others[3]**, a sum of Rs.40,000/- is granted to the 1st claimant, who is the mother of the deceased. Therefore, the total compensation comes to Rs.5,23,600/- (Rs.4,53,600/- + Rs.30,000/- + Rs.40,000/-). Except the said modification, the order of the Tribunal remains

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[1] 2017(6) ALD 170 (SC)
[2] (2009) 6 SCC 121
[3] 2018 LawSuit (SC) 904

unchanged. Insofar as the interest is concerned, interest of 7.5% shall be computed for the enhanced amount.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is dismissed and the Cross Objections is allowed enhancing the compensation amount awarded by the Tribunal from Rs.2,21,000/- to Rs.5,23,600/- payable by the 2nd respondent/insurance company. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. As the claimants claimed only Rs.4,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The 2nd respondent/insurance company is directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. It is needless to observe that the amounts deposited by the 2nd respondent/insurance company in pursuance of the interim orders passed by this Court in MACMAMP.No.1728 of 2006, dated 20.04.2006, shall be adjusted. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th September, 2019

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