

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 1341 OF 2006

JUDGMENT:

This appeal is directed by the claimant against the award and decree dated 12.07.2004 passed in O.P.No.670 of 2000 by the Motor Accidents Claims Tribunal-cum-Principal District Judge, R.R.District at L.B.Nagar (for short 'the Tribunal), whereby the tribunal granted compensation of Rs.2,50,000/- in a motor vehicle accident that occurred on 06.09.1999 at about 06.30 a.m while the deceased Narra Suryanarayana, aged 60 years was going on his scooter bearing No. AP F 1977 to Guntupalli Village after attending the function at Rayanapadu and when he reached ITI Centre on N.H.5, vehicle bearing No.AEK 4447 came in a rash and negligent manner without following the traffic rules from behind, hit the scooter of the deceased, for which the deceased fell down on the road and a lorry ran over on him, the friend of the deceased i.e. J.Srinivas Rao, shifted him to University General Hospital and gave a complaint to the PS Traffic, Vijayawada City IV against the lorry driver, as against the claim of Rs.5,00,000/-.

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

3. Before the tribunal, the 1st respondent remained exparte and the 2nd respondent – insurance company filed counter denying the claim petition.

4. In order to prove the case of the claimants, before the tribunal, PWs.1 and 2 were examined and marked Exs.A1 to A.6 and Exs.B.1 – copy of insurance policy was marked and no oral evidence was adduced on behalf of the respondents.

5. Basing on the material available on record, the tribunal granted compensation of Rs.2,50,000/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realization and that the accident occurred due to rash and negligent driving of the driver of the said lorry and that the insurance policy is existing on the date of accident and hence, respondents are liable to pay the compensation jointly and severally.

6. Learned counsel for the claimant submitted that the compensation granted by the tribunal is very meager and that the tribunal erred in assessing the compensation and hence, prayed to grant just and proper compensation.

7. Learned standing counsel for the insurance company submitted that the order passed by the tribunal is well considered in all aspects and needs no interference of this Court and prayed to dismiss the appeal.

8. There is no dispute with regard to the manner of accident and involvement of the vehicle. The deceased was aged about 60 years and doing business and cultivation by getting monthly income of Rs.30,000/- per month and that the deceased was income tax assessee. As per Ex.A.5 – salary certificate the

deceased monthly income is Rs.10,000/- plus Rs.2,500/- towards HRA. Thus, the monthly income of the deceased can be taken as Rs.12,500/- and accordingly, the same is considered. The age of the deceased is 60 years. As per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**¹, since the sole claimant, 1/3rd of his personal expenses have to be deducted. As per the decision of **Sarala Verma's** case referred supra, when the age of the deceased is 60 years, the relevant multiplier applicable is '9'. The deceased was self employed, as per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**² the claimant is entitled for 10% future prospects and when the age of the deceased is 60 years married, Rs.70,000/- under conventional heads can be granted which is just and proper. The annual income of the deceased comes to Rs.1,09,992/- (Rs.12,500/- - minus 1/3rd (Rs.4,160/-) plus 10% (Rs.833/-) x 12). Applying relevant multiplier '9', loss of dependency comes to Rs.9,89,928/- (Rs.1,09,992/- x 9). Thus, the claimant is entitled for total compensation of Rs.10,59,928/- (Rs.9,89,928/- + Rs.70,000/-), which rounded to Rs.10,60,000/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realization. Respondents 1 and 2 are directed to deposit the compensation amount within two months from the date of this judgment. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. Though the

¹ 2009 ACJ 1298

² 2017(6) 170 (SC)

claim is made for Rs.5,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**³ the compensation awarded can be more than the claim, the present appeal needs to be allowed. 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.

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

Miscellaneous petitions if any, shall stand closed.

Date: 12.11.2019
kvrn

T.AMARNATH GOUD,J

³ 2003(2) SCC 274