

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1883 OF 2005

JUDGMENT:

This appeal is filed by the appellant/2nd respondent/ insurance company aggrieved by the Order and Decree dated 04.06.2005 passed in O.P.No.313 of 2002 by the Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District, At L.B. Nagar, Hyderabad (for short, 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 petitioner is the wife of the deceased-Amal Mazumdar. On 12.11.2001 at about 3.45 p.m., when the deceased was going on foot to Hayathnagar Bus Stand, one Steering Auto bearing No.AP 11U 2713 came behind and hit him. It was driven at high speed without following any rules and regulations in a careless and callous manner proceeding from Hyderabad to Hayathnagar. Due to the accident, the deceased sustained severe head and other injuries and later succumbed to the injuries in the hospital. The petitioner lost her husband and she lost her dependency and suffered mental agony. Hence, the petitioner filed the claim petition claiming a compensation of Rs.4,00,000/- payable by both the respondents, being the owner and insurer of the crime vehicle.

4. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent filed a counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal has calculated the total compensation as Rs.4,47,072/- i.e., Rs.4,35,072/- towards loss of income, Rs.10,000/- towards loss of consortium & Rs.2,000/- towards funeral expenses, but since the claimant claimed only Rs.4,00,000/-, the Tribunal restricted the same to Rs.4,00,000/- and awarded an amount of Rs.4,00,000/- towards compensation with interest @ 9% per annum from the date of petition till the date of realization payable by the respondents jointly and severally. Dissatisfied with the fastening of the liability on the appellant/insurance company, the appellant/insurance company filed the present appeal.

6. In spite of notice, there is no representation for the respondents and even today when the matter is listed and the name of the claimant is shown in the cause list, none appeared. Since this matter pertains to the year 2005 and the accident has taken place on 12.11.2001, dodging the matter on one pretext or the other is of no purpose. Hence, the matter is decided on the strength of the evidence and material available on record and after

hearing Sri E.Venugopal Reddy, learned standing counsel appearing for the appellant and perused the material record.

7. Learned standing counsel for the appellant submits that on the date of the accident i.e., on 12.11.2001, there was no policy subsisting and Ex.B-1-copy of insurance policy is issued on 15.11.2001 and therefore, fastening of liability on the insurance company is unjust.

8. Having regard to the submissions made by the learned standing counsel for the appellant, the order passed by the Tribunal is liable to be set aside. Except the said modification, rest of the award remains un-changed.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed setting aside the order and decree dated 04.06.2005 in O.P.No.313 of 2002 passed by the Tribunal. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 17th October, 2019

KL