THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.511 & 537 OF 2010

COMMON JUDGMENT:

Since both the appeals arise out of an award passed in O.P.No.388 of 2005, dated 18-11-2008, by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.511 OF 2010:

2. This appeal is filed by the appellants/claimants on the ground that the Tribunal awarded meager compensation of Rs.3,09,000/- against the claim of Rs.4,00,000/- for the death of the deceased.

M.A.C.M.A.No.537 OF 2010:

3. This appeal is filed by the appellant/insurance company, on the ground that the deceased was traveling on the scooter along with two others and therefore, there is contributory negligence and that the compensation awarded by the Tribunal is excessive and it has no liability to pay the compensation.

4. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.511 of 2010.

5. The brief facts of the case are that on 24-11-2003 at about 8.00 A.M., while the deceased was proceeding on the scooter bearing No.AP10F 5923 from Venkataraopet village towards Pothareddypet, and when he reached the outskirts of Venkataraopet, at the fields of Vengala Kistaiah on the BT road, suddenly a jeep bearing No.AP23A 9956 came in a rash and negligent manner and dashed the deceased from opposite direction, due to which, the deceased received multiple injuries and died on the spot. The wife, sons and daughter of the deceased filed the aforesaid OP against respondents 1 and 2, owner and insurer of the aforesaid jeep, respectively, claiming compensation of Rs.4,00,000/-.

6. Before the Tribunal, the respondents filed their counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

7. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the contributory negligence of the rider of the scooter at 25% and also the negligence of the driver of the jeep at 75% and awarded compensation of Rs.4,12,000/- and fixed the liability of the respondents at Rs.3,09,000/- with interest @ 6% per annum.

7. Sri K.Venkata Rao, learned counsel for the appellants, submits that the Tribunal erred in taking the income of the appellant at Rs.6,000/- per month, ignoring the certificate issued by the Mandal Revenue Officer under Ex.A8, to the effect that the deceased was having agricultural lands and milk business and was getting Rs.1,86,000/-. He further submitted that the Tribunal erred in adopting the multiplier and awarded less compensation.

8. Sri Narsi Reddy Teegala, learned standing counsel for respondent No.2-insurance company, submits that there is contributory negligence on the part of the deceased. Ex.A8 certificate issued by the Mandal Revenue Officer, cannot be considered to compute the income of the deceased as the author of the said certificate was not examined by the claimants and hence, respondent No.2 is not liable to pay the compensation and sought to set aside the award of the Tribunal.

9. It is not in dispute that the deceased was aged 50 years at the time of accident. The Mandal Revenue Officer issued Ex.A8 certificate to show that the deceased was getting income of Rs.1,86,000/- by doing agriculture work and milk business, but the said Mandal Revenue Officer was not examined to prove the contents of the same. The Tribunal fixed the income of the deceased at Rs.6,000/- per month and deducted 1/3rd towards personal expenses. But, as the dependants are 4 in number, the Tribunal ought to have deducted 1/4th of the income of the

deceased. Hence, the monthly income, after deductions, comes to Rs.4,500/-, and the appropriate multiplier for the age of the deceased is '13' and loss of dependency comes to Rs.7,02,000/- (4,500/- x 12 x 13). The appellants are also entitled for Rs.70,000/- under conventional heads, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[1]. The sum of Rs.1,000/- granted by the Tribunal towards transportation charges is confirmed. Hence, the total compensation comes to Rs.7,73,000/-. Out of the said amount, the liability of the respondents is fixed at 75%, which comes to Rs.5,79,750/-

9. In the result, M.A.C.M.A.No.511 of 2010 is allowed and M.A.C.M.A.No.537 of 2010 is dismissed by enhancing the compensation amount awarded by the Tribunal from Rs.3,09,000/- to Rs.5,79,750/-. The enhanced amount shall carry interest @ 7.5% per annum. The appellants are directed to pay the Court fee on the difference amount awarded over and above the compensation amount claimed in the above O.P. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 03.07.2019
Shr

[1] 2017 (6) ALD 170 (SC)