

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. No.3399 OF 2002

JUDGMENT:

This appeal is filed by the appellant-2nd respondent/insurance company aggrieved by the Order and Decree dated 19.03.2002 passed in O.P.No.162 of 1999 by the Motor Vehicle Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (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 the 1st petitioner is the wife and petitioners 2 to 4 are the sons of deceased-Ch.John Wessely. On 19.01.1999 at about 8.20 a.m. while the deceased was proceeding on the motor cycle bearing No.AP 7A 468 from Bolaram towards Secunderabad and when he reached near the wine shop opposite to Satya Petrol Pump of Alwal, a van bearing No.10U 493 which was also proceeding in the same direction, dashed the deceased, as a result of which he fell down on the road and sustained multiple grievous injuries. He was shifted to CDR Hospitals, but he died on 23.01.1999 while taking treatment. The accident occurred due to the rash and negligent driving of the driver of the offending van. The deceased was working as the

MRO and was only earning member in the family. The deceased was contributing his entire income for their maintenance. Hence, the petitioners filed the claim petition claiming a compensation of Rs.10,00,000/-, payable by both the respondents, being the owner and insurer of the offending van.

4. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its 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 evidence of P.Ws.1 to 3 and the documentary evidence of Exs.A-1 to A-9 & Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending van and awarded total compensation of Rs.6,75,000/- i.e., Rs.6,16,000/- towards loss of dependency, Rs.15,000/- towards loss of estate, Rs.19,000/- towards pain & suffering and Rs.25,000/- towards medical expenses, with interest @ 12% per annum from the date of petition till the date of payment, payable by both the respondents. Aggrieved by the same, the appellant/2nd respondent/insurance company filed the present appeal.

6. Heard.

7. Sri P.Harinath Gupta, learned standing counsel for the appellant/insurance company contended that since the claim is made towards the death of the deceased, the claimants, who are the representatives of the deceased, are entitled for the amount of Rs.19,000/- towards pain & suffering awarded by the Tribunal and with regard to the interest, during the pendency of the O.P., the prevailing rate of interest of the bank was 9%, but the Tribunal has awarded interest @ 12%, which is excessive.

8. In the facts and circumstances of the case and having regard to the submissions made by the learned standing counsel for the appellant, this Court is of the opinion that the claimants are not entitled to the amount of Rs.19,000/- granted by the Tribunal towards pain & suffering. Therefore, the total compensation comes to Rs.6,56,000/- (Rs.6,75,000/- - Rs.19,000/-). With regard to the interest is concerned, the same is reduced from 12% to 9%. Except the said modification, the remaining operative portion of the impugned order is confirmed.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by reducing the compensation amount awarded by the Tribunal from Rs.6,75,000/- to Rs.6,56,000/- and the interest is reduced from 12% to 9%, payable by both the appellant & the 5th respondent jointly and severally. The appellant & the 5th respondent are

directed to deposit the compensation 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. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 23rd October, 2019

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