THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.791 of 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 06.11.2007 passed in O.P.No.2305 of 2005 by the VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Court below.

3. The brief facts of the case are that on 04.06.2005 at about 9.30 A.M., the deceased Kumar along with deceased T.Sudhakar were proceeding in the auto bearing No.AP 23V 3027, which was driven by Sudhakar slowly on the extreme left side of the road from Medcharla towards Sameerpet and when they reached Kistapoor turning, a lorry bearing No.AP 20V 1229 belonging to the 1st respondent came in a rash and negligent manner and hit the auto rickshaw, due to which Kumar died on the spot and Sudhakar was admitted in Medicity Hospital, Ganpoor, where he succumbed to injuries on the same day. The deceased-T.Kumar was aged about 20 years at the time of his death and was earning Rs.4,000/- per month as a painter and contributing the same to the claimants, who were dependents on him. The 1st petitioner is the mother and the 2nd petitioner is the father of the deceased-T.Kumar. The 1st respondent is the owner of the offending lorry bearing No.AP 20V 1229, the 2nd respondent is the policy holder and the 3rd respondent is the insurance company. Hence, the present claim

petition was filed by the claimants claiming compensation of Rs.4,00,000/- for the death of the deceased-T.Kumar.

4. Before the Court below, respondents 1 & 2 remained *ex parte.* The 3rd respondent filed 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 Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.4,00,000/- i.e., Rs.3,84,000/- towards loss of income, Rs.10,000/- towards loss of love and affection and Rs.6,000/- towards funeral expenses, with interest @ 6% per annum, fixing the liability against respondents 1 & 2 and the claim petition was dismissed against the 3rd respondent. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

6. Heard.

7. Learned counsel for the appellants submits that the Court below has not appreciated the fact with regard to the validity period of the policy and the accident has taken place during the subsistence of the policy period and the 1st respondent was having a valid driving licence, which is evident from Ex.X-1-driving licence, which was marked by R.W.1. It is further submitted that the

appellants are seeking only to fasten the liability against the 3rd respondent/insurance company on the point of pay and recovery since the offending lorry is insured and the 1st respondent-driver cum owner is having a valid licence and, hence, prayed to fix the liability on the 3rd respondent/insurance company to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner of the offending lorry. Learned counsel also prayed to enhance the interest granted by the Court below. He also submits that as held by the Apex Court in several decisions interest should be granted @ 7.5%.

8. Learned counsel for the appellants placed reliance on a decision of the Hon'ble Supreme Court reported in **National Insurance Co. Ltd. v. Swaran Singh and others[1],** wherein it is held that the liability of the insurance company has to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof.

9. In the similar circumstances, the Hon'ble Supreme Court in **Shivaraj Vs. Rajendra[2],** directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle. Therefore, this Court feels that it would be just and appropriate to direct the 3rd respondent/insurance company to pay the compensation amount

[1] (2004) 3 Supreme Court Cases 297
[2] 2018 AIR (SC) 4252

at the first instance and recover the same from the 1st respondent/owner.

10. In the facts and circumstances of the case, this Court is of the opinion that the Court below granted just compensation, as such, I do not see any infirmity in the impugned order. However, since it is stated by the learned counsel for the appellants that the Apex Court in several decisions granted interest @ 7.5%, the interest granted by the Court below @ 6% is enhanced to 7.5% on the awarded amount of Rs.4,00,000/-. The 3rd respondent/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner. Except the said modification, the remaining operative portion of the impugned order is confirmed.

11. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the interest from 6% to 7.5% on the compensation amount of Rs.4,00,000/- awarded by the Court below. The 3rd respondent/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner of the offending lorry. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 29th July, 2019

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