

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.517 OF 2004

AND

M.A.C.M.A.No.2521 OF 2005

COMMON JUDGMENT:

CMA No.517 of 2004 is filed by the insurance company and MACMA No.2521 of 2005 is filed by the claimants against the award, dated 07.10.2003 passed in O.P.No.2300 of 2001 by the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. The brief facts are that on 11.06.2001 the deceased A.Vamsidhar Reddy and another deceased by name Venkatappa Reddy in O.P.No.1624 of 2001 left Bhalki by motor cycle bearing No. AP 28 AA 3024 for Hyderabad, at about 05.00 p.m, when they reached near the Bridge No.489/1 on the outskirts of Girmapur Village on N.H.No.9, lorry bearing No. AP 9T 2379 driven by its driver came at high speed in a rash and negligent manner from opposite side and collided with the said motor cycle, for which the deceased sustained fatal injuries and Venkatappa Reddy died on the spot while the deceased Vamsidhar Reddy succumbed to injuries on the same day at Government Hospital, Sanga Reddy.

5. Before the tribunal, respondent No.1 remained exparte, respondent No. 2 filed counter denying the claim petition

6. In order to prove the case of the claimants, before the tribunal, PW.1 was examined and marked Exs.A1 to A.10 on their behalf. No oral evidence is adduced on behalf of the respondents. Ex.B.1 – copy of insurance policy was marked in O.P.No.1624 of 2001.

7. On considering the oral and documentary evidence, the tribunal granted compensation of Rs.6,40,000/-, but restricted to Rs.4,00,000/- as the petitioner claimed Rs.4,00,000/- with interest at 12% per annum from the date of petition till the date of realisation and directed the respondents to pay the compensation amount jointly and severally.

8. Learned counsel for the claimants contended that the accident occurred due to rash and negligent driving of the driver of the lorry and however, the tribunal failed to award just and fair compensation and that though the tribunal assessed the compensation at Rs.6,40,000/-, granted Rs.4,00,000/- and that there is no restriction to grant claimed amount and hence, prayed to grant just and fair compensation.

9. Learned standing counsel appearing for the insurance company contended that the amount awarded by the tribunal is excessive and that the tribunal erred in taking the age of the deceased and that the tribunal has to take the age of the parents for assessing the compensation and that the annual income taken by the tribunal is without any basis and that the interest granted by the tribunal is also very excessive and hence, prayed to set aside the order of the tribunal by allowing the appeal.

10. There is no dispute with regard to the manner of accident and involvement of the vehicle. The deceased was a student of 21 years pursuing B.E III year and on 02.02.2000 when he met with an accident, the Police Kondapur registered a case in Crime No.32 of 2001, which is Ex.A.1-FIR and Ex.A.3 – c.c. of charge sheet. The Division Bench of this

Court in **Andhra Pradesh High Court in B.Ramulamma & Ors. v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar & Anr.**,¹, observed that it was very difficult to determine the income of a student who was allowed to complete his course and it was appropriate and reasonable to take salary at the entry level fixed by the Government for such jobs. Therefore, the monthly income of the deceased can be fixed at Rs.12,000/-. When the age of the deceased is 21 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**², the relevant multiplier applicable is '18'. Since the deceased was unmarried 50% personal expenses have to be deducted, which comes to Rs.6,000/- (12,000/- X 50%) per month. As per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**³ the claimants are entitled for Rs.30,000/- towards conventional heads. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram**⁴, the parents of the deceased are entitled for Rs.40,000/- each as filial. Thus, the claimants are entitled for 14,06,000/- (Rs.12,96,000/- (Rs.6,000/- p.a. x 12 x 18 multiplier) + Rs.30,000/- + Rs.80,000/-), which rounded to Rs.14,00,000/-. The compensation amount shall carry interest 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.4,00,000/- 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**⁵ the compensation awarded can be more than the claim, the present appeal needs to be allowed. Respondents 1 and 2 are directed to deposit the compensation amount jointly and severally within three months from

¹ 2011 ACJ 1702

² 2009 ACJ 1298

³ 2017(6) 170 (SC)

⁴ 2018 Law Suit (SC) 904

⁵ 2003(2) SCC 274

the date of this judgment. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. 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.

11. In view of the above, MC.M.A.No.517 OF 2004 filed by the insurance company is partly allowed reducing the interest from 12% to 7.5% per annum and M.A.C.M.A.No.2521 of 2005 filed by claimants is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

Date 22.10.2019
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