

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2209 OF 2009

JUDGMENT:

This appeal is filed by the appellants-claimants in O.P.No.240 of 2006 aggrieved by the common order and decree dated 25.02.2008 passed in O.P.Nos.240 of 2006 & 239 of 2006 by the Motor Accident Claims Tribunal-cum-III Additional District Judge (F.T.C), Mahabubnagar at Gadwal (for short, the Tribunal).

2. The brief facts of the case are that the appellants are the family members of the deceased Vadla Balachandrudu. On 24.05.2005, the deceased along with one Chakali Bojjanna, who is the claimant in O.P.No.239 of 2006, were proceeding towards Narva on motor cycle bearing No.AP 22/B 3184 at about 9.00 p.m., when they were proceeding near Rampur Gate, one jeep bearing No.ADT 4261 came in opposite direction in high speed, rash and negligent manner and dashed against the motor cycle, due to which the deceased sustained multiple injuries and died on the spot. Chakali Bojjanna has sustained fracture injuries and other injuries all over the body. On complaint of one Vadla Venkatesh, the Police, Narva, registered a case in Crime No.26 of 2005, dated 25.05.2005, under Sections 304-A and 338 of IPC. Prior to the accident, both the deceased and Chakali Bojjanna were hale and healthy and earning Rs.6,000/- per month and Rs.50,000/- to Rs.60,000/- per annum respectively as skilled labour in sub-section, Narva and agriculturist. Due to the said accident, the family members of the deceased became destitutes and thrown into streets and there is no other person to look after welfare of the family members of the

deceased. Due to the sudden and untimely death of the deceased, the wife of the deceased lost her right of consortium at her young age and all of them have lost love and affection of the deceased and put to much mental pain and suffering and sustained huge loss mentally, physically and financially. The 1st respondent is the owner-cum-driver of the crime vehicle and the 2nd respondent is the insurer of the crime vehicle and both the respondents are jointly and severally liable to pay the compensation to the appellants.

3. Before the Tribunal, the 2nd 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.

4. After considering the evidence produced by the parties, the Tribunal dismissed the claim petition. Aggrieved by the same, the appellants filed the present appeal.

5. Heard.

6. While dealing with Issue No.1, the Tribunal has confirmed that the accident has taken place and it has negated insofar as the crime/insured jeep is concerned by pointing out contradiction between the depositions of P.Ws.2 & 3. P.W.2, who is an eye witness to the accident, has categorically stated in his cross-examination that he was one of the passenger in crime jeep, which is involved in the accident. P.W.3, who is the pillion rider on the motor bike, stated in his cross-examination that when the accident has taken place, he lost his consciousness and to regain his consciousness, it took five to six days.

7. On perusal of the evidence of P.Ws.2 & 3, this Court finds that there is no contradiction and in the event of any small omissions and commissions made while deposing their evidence, they cannot be viewed very seriously, more particularly in the matter of accident case. No case has been made out by the 2nd respondent/insurance company that the crime jeep is only planted for the purpose of claiming insurance and the crime jeep is not involved in the accident.

8. In view of the above, this Court feels that the Tribunal ought to have proceeded further in concluding the O.P. in computing the compensation.

9. Accordingly, the appeal is allowed setting aside the order and decree dated 25.02.2008 in O.P.No.240 of 2006 passed by the Tribunal and remanding the matter to the Tribunal to dispose of the said O.P. on merits, within a period of three (03) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 18th June, 2019

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