

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 1706 OF 2006

JUDGMENT:

During pendency of O.P., the injured claimant i.e. 1st petitioner died, his legal heirs are brought on record as per order dated 03.07.2003 in I.A.No.3838 of 2002.

2. This appeal is directed by the claimants against the award dated 19.01.2002 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short 'the Tribunal'), in O.P.No.152 of 2002, whereby the tribunal allowed the appeal in part granting compensation of Rs.36,667/- in pursuance of Ex.A.8-medical bills and treatment, on account of the accident occurred on 27.11.2001 at 9 p.m., when the 1st petitioner coming from Pochampad and was proceeding to Bussapoor side, near Substation of Bussapoor Village, one motorcyclist bearing No. AP 25 G 4883 came in a rash and negligent manner at high speed, dashed the 1st petitioner, as a result of which the 1st petitioner sustained fracture injuries to right leg, left leg, injuries to left ankle, right leg bone was crushed and also received multiple and grievous injuries on various parts of the body, shifted to Government Hospital, Nizamabad and took treatment for two days i.e. from 28.11.2001 to 30.11.2001, thereafter, he was shifted to Machilipatnam and took treatment from

02.12.2001 to 02.01.2002 and subsequently, he was shifted to Government Hospital, Guntur and treated from 07.01.2002 to 08.01.2002 by Dr M.Sunder Rao, and later he was shifted to Padmavati Hospital, Gudiwada and treated by Dr Mannem Bhavani Shanker from 09.01.2002 to 11.01.2002 and that he was also took treatment in Chalasani Hospital, Gudiwada and that bone grafting was done to his right leg and that prior to the accident the 1st petitioner was hale and healthy, used to earn Rs.2 lakhs per year, as against the claim of Rs.5,00,000/-.

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

4. Respondent No.1 remained exparte. Respondent No.2 filed written statement denying the claim petition.

5. In order to prove the case of the claimants, PW.1, who is the wife of the 1st petitioner was examined and marked Exs.A1 to A.11 and Exs.X.1 to X3 and Ex.B.1 - copy of insurance policy. No oral evidence is adduced on behalf of the respondents.

6. Learned counsel for the appellants contended that the compensation granted by the tribunal is very meager and that the 1st petitioner died during the course of treatment for injuries sustained in the accident and that relied on in

United India Insurance Company Limited, Sangareddy v G.Kishan Rao and others¹ and in **Khairullah @ Babu, Lorry Driver v Smnt Anita @ Amruthalal Patel²**, and hence, prayed to enhance the compensation granted by the tribunal.

7. Learned standing counsel appearing for the insurance company vehemently denied the contention of the counsel for the appellants and contended that the order passed by the tribunal is well considered and need no interference of this Court.

8. It is a case of injuries. In so far as contention of learned counsel for the appellant that the 1st petitioner died during the course of treatment for injuries sustained in the accident and that the claimants are entitled for higher compensation cannot be accepted since nexus between the cause of death and the accident is not proved and that the petitioners neither the postmortem report nor death certificate of the 1st petitioner is filed or doctors, who treated the 1st petitioner were not examined. In the absence of medical evidence, it is not just and proper to go in to the issues decided by the tribunal. Basing on the injuries and in the light of the judgment in **G.Kishan Rao and others'** case referred supra, wherein it was held that after the death of the injured, the

¹ 2004(1) ALD 626

² 1994(1) LT 338 (SB)

legal heirs of the injured are entitled to compensation only under heads of loss of estate, medical expenses, transportation charges and extra nourishment and they are not entitled to compensation under the heads of disability and pain and suffering, this Court feels that awarding Rs.20,000/- towards under the loss of estate, transportation charges and extra nourishment would be just and proper since medical expenses have already been awarded by the tribunal. The judgment relied on by the appellants in **Khairullah @ Babu, Lorry Driver**'s case referred supra is not applicable to the present facts of the case. Thus, the appellants are entitled for compensation of Rs.56,667/- (Rs.36,667/- + Rs.20,000/-), rounded to Rs.57,000/-. The enhancement compensation shall carry interest at 7.5% per annum from the date of petition till the date of realization. Respondents are directed to deposit the compensation amount jointly and severally within three months from the date of judgment.

9. In view of the above, the appeal is allowed in part. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 17-10-2019
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