

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1379 OF 2008

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 12.07.2007 passed in O.P.No.2774 of 2005 by the III Additional Chief Judge, City Civil Court, Hyderabad (for short, the Court below).

2. The brief facts of the case are that on 28.11.2003 the deceased-N.Mallaiah and others came to RTC bus stand to board the bus. While he was boarding the bus No.AP 10Z 2444, the driver has started the bus in reverse direction, in a rash and negligent manner, due to which Mallaiah fell down from the bus and died on the spot. The deceased was an agricultural labour, viz., Neeradi/Maskuri (water man) and was earning Rs.4,000/- per month and the age of the deceased was 35 years at the time of the accident. His wife and children as well as his parents made present claim for compensation of Rs.6,00,000/-.

3. Before the Tribunal, the respondents 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 oral and documentary evidence on record, the Tribunal, with regard to issue No.1 as to whether Sri N.Mallaiah died on 28.11.2003 due to rash and negligent driving of RTC bus No.AP 10Z 2444, stated that the deceased negligently tried to board the bus and fell down because it is

already under motion and that merely because police filed charge sheet, no interference can be drawn that the negligence is on the part of driver only and answered Issue No.1 in favour of respondents and against the claimants and with regard to the Issue No.2 as to whether the claimants are entitled to any compensation and if so, against whom, the Tribunal has answered the same in favour of the claimants stating that since death is caused while using the motor vehicle belonging to the respondents, under no fault liability under Section 140 of the Motor Vehicle Act, the Tribunal has awarded a compensation of Rs.50,000/- with interest @ 7.5% from the date of petition till the date of realization. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Heard.

6. The Court below erred in giving the finding that there is no negligence on the part of the driver of the RTC bus and accordingly the death of the deceased, which has taken place, was treated under no fault liability. As against the claim of Rs.6,00,000/- as compensation for the death of the deceased, though the Court below has computed an amount of Rs.3,77,450/-, only an amount of Rs.50,000/- was awarded under No fault liability under Section 140 of the Motor Vehicle Act. Insofar as Issue No.1 is concerned, regarding fixing of liability for rash and negligent driving of the driver of the RTC bus, it is clear from Ex.A2-Charge Sheet that the deceased was

boarding the bus and the driver had moved the bus in backward direction, due to which the deceased fell down and came under the bus and died. When the passengers are boarding the bus, it is the duty of the driver to be more sure and responsible when he starts the bus or moves the bus.

7. Insofar as computing the compensation is concerned, since the deceased is working as water man and according to Ex.A8-salary certificate, the deceased was earning Rs.450/- per month. Therefore, the Court below has fixed the minimum earnings of the deceased as Rs.3,000/- to meet the basic requirements of the family. Therefore, this Court is inclined to take the income of the deceased as Rs.3,000/- per month and after deduction of 1/4th towards personal expenses of the deceased since there are six family members, which comes to Rs.2,250/- (Rs.3,000/- - Rs.750/- (1/4)), the annual income comes to Rs.27,000/- (Rs.2,250/- x 12 months). The age of the deceased at the time of the accident is 35 years. Therefore, the multiplier for the age of the deceased is '16' as per the decision reported in **Sarla Verma and others v. Delhi Transport Corporation and Another**¹. Hence, the compensation under the head 'loss of income' comes to Rs.4,32,000/- (Rs.27,000/- x 16). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**². Therefore, the total compensation comes to Rs.5,02,000/-

¹ (2009) 6 SCC 121

² 2017(6) ALD 170 (SC)

(Rs.4,32,000/- + Rs.70,000/-). In view of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**³, appellants 5 & 6, being the parents of the deceased, are entitled to a sum of Rs.80,000/- (Rs.40,000/- x 2) under the head of loss of filial consortium and the appellants 2 to 4, being minor children of the deceased, are entitled to a sum of Rs.1,50,000/- (Rs.50,000/- X 3) under the head of loss of filial consortium. Therefore, the total amount under the head of loss of filial consortium comes to Rs.2,30,000/- (Rs.80,000/- + Rs.1,50,000/-). Therefore, the total compensation comes to Rs.7,32,000/- (Rs.5,02,000/- + Rs.2,30,000/-). Insofar as the interest is concerned, for the amount awarded by this Court, interest of 7.5% shall be computed from the date of petition till realization.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed by granting compensation of Rs.7,32,000/- with interest @ 7.5% per annum from the date of petition till realisation. As the appellants/claimants claimed only Rs.6,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24th June, 2019
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³ 2018 LawSuit (SC) 904