

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.896 of 2008

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 25-01-2008 passed in O.P.No.426 of 2005 by the Motor Accidents Claims Tribunal-cum-I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad.

2. Brief facts of the case are that one P.Gopal while riding on Hero Honda Motor Cycle bearing No.AP 28 AK 5463 from Bopanaram village to Jinnaram village, Ranga Reddy District and when taking a turn, lost control over the said motorcycle and fell into a road side pit, resulting into fatal injuries to him and died. His wife filed the O.P. against the owner and insurer of the said motorcycle i.e. respondent Nos.1 and 2 herein claiming compensation of Rs.4,70,000/- for the death of her husband in that accident.

3. Before the Tribunal, respondent Nos.1 and 2 filed their counters denying the averments made in the O.P. and contended that the accident occurred due to the rash and negligent driving of the deceased and therefore, they are not liable to pay any compensation.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that Section 163 of the M.V. Act covers the cases even where negligence is on the part of the victim and that the

provisions of the said Act have their effect overriding other provisions of the Act and held that the 1st respondent is liable to pay compensation and accordingly awarded compensation of Rs.1,69,500/- to the claimant. Not satisfying the quantum of compensation granted by the Tribunal, the appellant/claimant filed the present appeal against both the respondents.

5. Learned counsel for the appellant contends that the compensation awarded is very meager. The Tribunal ignored in awarding compensation towards conventional head etc., He further contends that the policy is not an act policy but it is comprehensive package policy and thus, the claimant is entitled to claim higher compensation and since the issue has already been decided by the Tribunal, it is not for the learned counsel for the 2nd respondent to raise objection in the appeal filed by the claimants. In support of his contention, he relied on the decisions of the Supreme Court in **Amrit Lal Sood Vs. Kaushalya Devi Thapar**¹, **Manuara Khatun Vs. Rjesh Kr. Singh**², **United India Insurance Co. Ltd. Vs. Katikala Indira**³.

6. Sri Somanchi Venkateswarlu, learned Standing Counsel for the 2nd respondent contends that the deceased was the borrower of the two wheeler and he stepped into the shoes of the owner of the vehicle and accordingly, for the accident which occurred, he is not liable for any compensation since the policy covers only the owner of the vehicle and the driver of the vehicle. Therefore, the appellant/claimant is not entitled to claim any compensation from the 2nd respondent. He relied upon the

¹ 1998 ACJ 531

² 2017 (2) ALD 65 (SC)

³ 2014 ACJ 1720

decision of the Supreme Court in **Ningamma Vs. United India Insurance Company Limited**⁴.

7. Admittedly, the deceased is not the owner of the vehicle. However, the appellant filed this appeal with regard to the enhancement of compensation. On perusal of the award passed by the Tribunal, it is clear that the compensation awarded by the Tribunal is just and proper in respect of all the heads and granted compensation accordingly. However, the Tribunal did not grant any compensation for love and affection i.e. conventional head as per the decision of the Supreme Court in **National Insurance Co. Limited Vs. Pranay Sethi**⁵. Therefore, apart from the compensation awarded by the Tribunal, an amount of Rs.70,000/- can be granted to the appellant towards conventional head. Hence, the total compensation comes to Rs.2,39,500/- (1,69,500/- + 70,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,69,500/- to Rs.2,39,500/- The appellant is entitled to interest @ 7.5% per annum on enhanced compensation from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**⁶. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such

⁴ 2009 Law Suit (SC) 2009

⁵ 2017 (6) 170 (SC)

⁶ 2013 ACJ 1403 = 2013 (4) ALT 35

deposit, the appellant is permitted to withdraw the entire amount as held by the Tribunal in its award. No costs.

9. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

JUSTICE T.AMARNATH GOUD

Date: 15-07-2019

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