

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 3687 OF 2005

JUDGMENT:

This appeal is directed by the claimant against the order and decree dated 08.09.2005 passed in O.P.No.766 of 2001 by the Principal Motor Accidents Claims Tribunal, Nalgonda (for short 'the Tribunal'), whereby the tribunal rejected the claim of the claimant that the owner of the Bajaj Auto Pick up van bearing No.AP 13 V 2563 was not responsible for the accident and the rider of the scooter bearing No. AP 24 A 9078 was solely responsible for the accident and hence, the claimant is not entitled for any compensation.

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

3. Before the tribunal, respondents 1 and 4 remained exparte and respondents 2 and 3 filed counter denying the claim petition.

4. In order to prove the case of the claimant, before the tribunal, PWs.1 to 3 were examined and marked Exs.A1 to A.15. RW.1 was examined and Exs.B.1 to B.3 were marked on behalf of the respondents 2 and 3.

5. The facts of the case are that on 06.11.2000 at 08.30 PM the deceased Mandadi Linga Reddy was proceeding from Valigonda to Bhongir on his scooter bearing registration No.AP 24 A 9078, a Bajaj auto pickup van stationed in the outskirts of Anjanapuram

Village without any care left in the public place, the rider of the scooter did not notice the said van due to darkness, dashed against the said van, for which the deceased, who was pillion rider sustained grievous injuries and fractures, immediately, shifted to Bhongir Area Hospital and as his condition was serious, shifted to Kamineni Hospital, Hyderabad, where the doctors advised to take the deceased to Gandhi Hospital and that the deceased succumbed to injuries while he was undergoing treatment in Osmania Hospital on 24.11.2000.

6. Learned counsel for the claimant submitted that the tribunal failed to appreciate the evidence available on record and that the tribunal erroneously dismissed the claim petition and that Ex.A.1-FIR and Exs.A.4 and A.9 shows that the van was parked on the road, which was met with an accident earlier and hence, prayed to allow the appeal granting just and proper compensation.

7. Learned standing counsel for the insurance company vehemently opposed the appeal and submitted that the claimant ought to have examined the rider of the scooter Danaiah since he was the crucial and eye witness to the accident on the fateful day and that the order passed by the tribunal is well considered in all aspects and needs no interference of this Court and prayed to dismiss the appeal.

8. There is no dispute with regard to the manner of accident and involvement of the vehicle. As per the investigation report submitted by the investigator of the Insurance Company, the

insured scooter hit the stationed or parked pickup van, which is already involved in the accident. Ex.A.7-charge sheet indicates that the scooter went and hit the auto. The Insurance Company did not raise the contention that the rider of the scooter was not examined and no such plea was taken in its counter. Therefore, the Insurance Company cannot improve its case when they have not raised any plea on the above lines and hence, the appeal is liable to be allowed. The age of the deceased was 60 years and as per Ex.A.8-pension certificate, he was getting pension of Rs.3,925/- per month as on the date of accident. The age of the deceased is 60 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**¹, the relevant multiplier is '9' and since the sole claimant, 1/3rd of his personal expenses have to be deducted. The deceased was self employed, as per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**², when the age of the deceased is 60 years married, Rs.70,000/- under conventional heads can be granted which is just and proper. Since the deceased is aged about 60 years and retired employee, no future prospects can be granted. The annual income of the deceased comes to Rs.31,344/- (Rs.3,925/- - minus 1/3rd (Rs.1,308/-) x 12). Applying relevant multiplier '9', loss of dependency comes to Rs.2,82,096/- (Rs.31,344/- x 9). Thus, the claimant is entitled for total compensation of Rs.3,52,096/- (Rs.2,82,096/- + Rs.70,000/-), which rounded to Rs.3,53,000/-.

¹ 2009 ACJ 1298

² 2017(6) 170 (SC)

The compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realization. Since the rider of the scooter has not taken any precautions to avoid accident, some amount of contributory negligence was apportioned on him. Accordingly, 10% contributory negligence was attributed on the rider of the scooter and 90% was attributed on the pickup van, which is insured with the Insurance Company. The Insurance Company is directed to deposit 90% the compensation amount within two months from the date of this judgment. The claimant is entitled to withdraw the compensation amount soon after the deposit is made.

9. In view of the above, the appeal is allowed setting aside the order and decree dated 08.09.2005 passed in O.P.No.766 of 2001 by the Principal Motor Accidents Claims Tribunal, Nalgonda. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 20.11.2019
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