

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.2711 OF 2019

AND

Cross Objections No.53 OF 2019

COMMON JUDGMENT:

MACMA No.2711 of 2019 is filed by the insurance company and Cross Objections No.53 of 2019 is filed by the claimants against the award and decree, dated 30.08.2017 passed in O.P.No.34 of 2016 by the Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Miryalaguda (for short 'the Tribunal).

2. Since both the appeal and cross objections arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

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

4. The 1st claimant is the husband and claimants 2 to 5 are major children of the deceased.

5. The brief facts are that the petitioners family decided to perform the marriage of the 4th petitioner with their village girl on 01.06.2013, the deceased Kampasati Saidamma and their relatives were bringing bride from her house to the house of the petitioners, when they reached their house at about 10.30 p.m, a lorry bearing No.HP 12 D 6682 came from Damarcherla side in a rash and negligent manner at high speed, dashed the deceased, for which she sustained injuries over the body and died on the spot.

6. Before the tribunal, respondent Nos.1 and 2 remained exparte. Respondent No. 3-insurance company filed counter denying the claim petition.

7. In order to prove the case of the claimants before the tribunal, PWs.1 was examined and marked Exs.A1 to A.6 on their behalf. Ex.B.1-policy was marked on behalf of respondents. No oral evidence is adduced on behalf of the respondents.

8. On considering the oral and documentary evidence, the tribunal granted compensation of Rs.11,87,000/- with interest at 7.5% per annum from the date of petition till the date of realisation and that the respondents are jointly and severally liable to pay the compensation, as against the compensation amount of Rs.11,00,000/-.

9. Learned standing counsel appearing for the insurance company contended that Rs.1,00,000/- as consortium to the husband and Rs.1,00,000/- each towards loss of love and affection to the petitioners 2 to 5 granted by the tribunal is erroneous and that the petitioners 2 to 5 are majors and not minors and hence, they are not entitled for the above and that the compensation granted by the tribunal is erroneous and hence, prayed to set aside the order of the tribunal by allowing the appeal.

10. Per contra, learned counsel for the claimants contended that the tribunal 1/3rd personal expenses of the deceased instead of 1/4th and that the compensation granted by the tribunal is very meagre and hence, prayed to enhance the compensation.

11. It is the case of death. There is no dispute with regard to the manner of accident and involvement of the vehicle. Since the claimants are husband and major children of the deceased, the decision of the apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram**¹ is not applicable. As rightly contended by the tribunal, the income of the deceased can be considered as Rs.6,000/- per month. The age of the deceased was 45 years as on the date of accident, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**², the relevant multiplier applicable is '14'. Since the claimants are five in number, 1/4th 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**³ the claimants are entitled for 25% future prospects and when the age of the deceased is 45 years, married, the claimants are entitled for Rs.70,000/- under conventional heads, which is just and proper. The annual income of the deceased is Rs.67,500/- (Rs.6,000/- minus ¼ (Rs.1500) plus 25% (Rs.1125/-) x 12). The loss of dependency comes to Rs.9,45,000/- (Rs.67,500/- x 14). Thus, the claimants are entitled for total compensation of Rs.10,15,000/- (Rs.9,45,000/- + Rs.70,000/-). The compensation amount shall carry interest @ 7.5% per annum from the date of petition till the date of realisation.

¹ 2018 Law Suit (SC) 904

² 2009 ACJ 1298

³ 2017(6) 170 (SC)

The claimants are entitled to withdraw the compensation amount soon after the deposit is made.

12. In view of the above, M.A.C.M.A.No.2711 OF 2019 filed by the insurance company is allowed and Cross Objection No.53 of 2019 filed by claimants is partly allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

Date 31.10.2019
kvrn

T.AMARNATH GOUD,J

