

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 2211 OF 2006

JUDGMENT:

This appeal is directed by the claimants against the judgment and decree dated 06.06.2006 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad in O.P.No.154 of 2002, whereby the tribunal granted compensation of Rs.2,18,372/- with proportionate costs and interest @ 7.5% per annum on account of the accident occurred on 05.01.2002, as against the claim of Rs.4,00,000/-.

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

3. When the injured Vempally Rajanna, the 1st petitioner along with two others boarded the auto bearing No.AP 15 T 3812 on 05.01.2002 at Navipet bus stand to go to Nizamabad, at about 06.30 PM, when the said auto reached near Cheruvu Katta, Jankampet Village, Yedpalli Mandal, the driver of the auto drove it at high speed in rash and negligent manner, lost control over the vehicle, for which the auto turned turtle, the injured 1st petitioner received injuries to his right leg, grievous injury to right hand, right shoulder, multiple and grievous injuries on other parts of the body, immediately shifted to Thirumala Nursing Home, Nizamabad and the right leg was amputated.

4. During pendency of O.P. the injured 1st petitioner died on 11.05.2002 due to injuries, petitioners 2 to 4, who are wife, son

and daughter were brought on record as per order dated 19.08.2003 in I.A.No.3529 of 2002.

5. Before the tribunal, in order to prove the case of the claimants, PWs.1 and 2 were examined and marked Exs.A1 to A.9. On behalf of the respondents, RWs.1 was examined and Exs.B.1 and B.2 were marked.

6. Learned counsel appearing for the claimants contended that the tribunal failed to appreciate the evidence available on record in proper perspective and that the compensation granted by the tribunal is meager and as the deceased died due to injuries, just and proper compensation may be granted as per the decisions of the Apex Court by allowing the appeal.

7. Learned standing counsel for the insurance company contended that the order passed by the tribunal is well considered and needs no interference of this Court.

8. On perusal of the entire material available on record and having regard to the facts and circumstances of the case, it is a case of death. There is no dispute with regard to the nature of accident and involvement of the vehicle. The deceased died on 11.05.2002 due to injuries sustained in the accident occurred on 05.01.2002. The age of the deceased is 57 years as observed by the tribunal. Though the deceased doing agriculture, selling milk and vegetables, in the absence of proof, as per the decision of the Apex Court in **Ramachandrappa v Royal Sundaram Alliance**

Insurance Co. Ltd.¹, notional income of Rs.4,500/- can be taken as monthly income and accordingly, the same is considered. The deceased is self employed and aged about 57 years, as per decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**², 10% towards future prospects and Rs.70,000/- towards conventional heads can be granted. The dependants are three in number 1/3rd has to be deducted towards personal expenses of the deceased. The annual income of the deceased comes to Rs.39,600/- (Rs.4,500/- x 1/3 x 10% x 12). Since the age of the deceased is 57 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**³, the relevant multiplier applicable is '9'. Applying relevant multiplier, the loss of dependency comes to Rs.3,56,400/-. Thus, the claimants are entitled for total compensation of Rs.4,26,400/-(Rs.3,56,400/- + Rs.70,000/-). The enhanced compensation shall carry interest @ 7.5 % per annum from the date of petition till the date of realization. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. Though the claim is made for Rs.4,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**⁴ the compensation awarded can be more than the claim, the present appeal needs to be allowed. The claimants have to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the

¹ (2011) 13 SCC 236

² 2017(6) 170 (SC)

³ 2009 ACJ 1298

⁴ 2003(2) SCC 274

M.V. Rules before the Tribunal, the claimants cannot be permitted to execute for the enhanced amount.

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

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 09.12.2019
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