THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2925 OF 2011

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 30.11.2009 passed in M.V.O.P.No.118 of 2007 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy (for short, the Tribunal).

2. The brief facts of the case are that appellant is the wife of the deceased, J.Mallappa. On 17.02.2007 at about 12.00 noon, while the deceased was waiting for the bus at Digwal bus stop by the side of the road, an auto bearing No.AP23V 8450, came in high speed and in a rash and negligent manner and dashed against the deceased, on account of which, he sustained grievous injuries and died while shifting him to the hospital. The claimant filed aforesaid OP claiming compensation of Rs.2,00,000/- against the respondents, for the death of the deceased.

3. The respondents filed their separate counters 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 came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto and awarded total compensation of Rs.1,40,000/- with interest @ 7% per annum, holding respondent No.1 is alone liable to pay the same, as he has violated the terms and conditions of the policy, while dismissing the claim against respondent No.2.

Challenging the said order, the appellant filed the present appeal and seeking enhancement of the compensation.

5. Sri C.Pratap Reddy, learned counsel for the appellant, submitted that the Apex Court in **Mukund Dewangan V. Oriental Insurance Company Limited**[1], held that if a driver holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect and accordingly liability has been fastened against the insurance company and hence, respondent No.2 is liable to pay compensation. He further submitted that the appellant is entitled for Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[2] and therefore prayed to allow the appeal.

6. Sri T.Mahender Rao, learned standing counsel appearing for respondent No.2-insurance company, submitted that accident was caused by the non-transport vehicle and the driver had no licence to ply the non-transport vehicle and accordingly, respondent No.2 is not liable to the compensation and therefore sought to dismiss the appeal.

7. Having regard to the facts and circumstanced of the case, and in view of the decision of the Apex Court cited supra, the insurance company is also liable to pay the compensation to the appellant. Therefore, the finding of the Tribunal to the extent of exonerating the liability of respondent No.2 is set aside. The Tribunal has rightly taken into consideration the income of the deceased at Rs.3,000/- per month, has adopted multiplier '5', as the age of the

[1] AIR 2017 Supreme Court, 3668
[2] 2017(6) ALD 170 (SC)

deceased was 70 years, and after deducting 1/3rd towards personal expenses, arrived at 'loss of dependency' @ Rs.1,20,000/- (Rs.24,000/- x 5). The appellant is also entitled to Rs.70,000/- towards conventional charges, as per **Pranay Sethi**'s case (supra). Therefore, the total compensation comes to Rs.1,90,000/- (Rs.1,20,000/- + Rs.70,000/-).

12. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation amount awarded by the Tribunal from Rs.1,40,000/- to Rs.1,90,000/-, directing respondent Nos.1 and 2 to pay the compensation amount jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 18.07.2019
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