THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 882 OF 2006

JUDGMENT:

This appeal is directed by the claimants against the judgment dated 22.11.2005 passed by the Motor Accidents Claims Tribunal-cum- District Judge, Nizamabad (for short 'the Tribunal), in O.P.Nos.143 of 2002, whereby the tribunal granted compensation of Rs.4,49,500/- in a motor vehicle accident that occurred on 27.10.2001 when the deceased Mohd.Osman and Khaleel were traveling in a jeep bearing No.MH 10 C 2962 from Hyderabad to Nizamabad along with bakery goods and when they reached near a crossing at Mamidipalli (v) shivar on N.H.No.16 road at about 11.30 p.m. one scooter came from opposite direction and the driver of the jeep tried to escape the said scooter, drove the jeep at high speed in rash and negligent manner and lost control over the jeep, the jeep turned turtle, for which the deceased came underneath the jeep and died on the spot and Khaleel sustained multiple, grievous and bleeding injuries and was shifted to the Government Headquarters Hospital, Nizamabad, as against the claim of Rs.7,00,000/-.

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

3. Respondents filed written statements denying claim petition.

4. In order to prove the case of the claimants, PWs.1 and 2 were examined and marked Exs.A1 to A.5 on their behalf. RW.1 examined on behalf of the respondents in support of their contentions and marked Ex.B.1 copy of policy. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

1) Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. MH 10 C 2962 by its driver?
2) Whether the petitioners are entitled for compensation, if so, to what just amount and against whom?
3) To what relief?

5. There is no dispute with regard to the involvement of the vehicle. Basing on the evidence of RW1, the tribunal held that the insurance company is not liable to pay compensation as the policy is act policy for private use only and not for hire or reward or carriage of goods and that PW.1 denied the suggestion that the deceased was working under one Khaleel on a monthly salary for supplying bread and that according to PW.1, the deceased and his brother were doing bakery business jointly and that they do not choose to examine the owner of the vehicle that the deceased attending business of

the insured and that the deceased and his brother hired the vehicle for transporting the bakery items.

6. A perusal of the material available on record and after hearing learned counsel, this Court is of the opinion that the vehicle is insured with the 2nd respondent as per the evidence of RW.1, which is not in dispute. Since the vehicle is covered by valid policy and the accident took place during the subsistence of policy, fastening liability only on the 1st respondent does not arise when the accident took place, the vehicle turned turtle, the deceased, who is traveling in the jeep has fallen down and the deceased is underneath the jeep as per the evidence of PW.1. Ex.A.1- c.c. of FIR and Ex.A.2 – charge sheet shows that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. The policy issued by the insurer is Act policy, as admitted, the deceased was found underneath the jeep, the liability for payment of compensation can be fastened on both the respondents, i.e. owner and insurance company, jointly and severally. Therefore, respondents 1 and 2, who are insured and insurer of the crime vehicle, are liable to pay compensation jointly and severally.

7. Insofar deciding the compensation is concerned, the claimants are five in number i.e. wife, son, daughter and parents, 1/4th personal expenses of the deceased have to be

deducted. When there is no proof of income, 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. When the age of the deceased is 30 years, 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 '17'. The deceased is below 40 years, as per the decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**[3] the claimants are entitled for 40% future prospects and Rs.70,000/- towards conventional heads. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram**[4]**,** the three minor children of the deceased are entitled for Rs.50,000/- each and the mother of the deceased is entitled for Rs.40,000/- as filial.

8. The annual income of the deceased is comes to Rs.56,700/- (Rs.4,500/- minus 1/4th personal expenses + 40 % future prospects x 12). Applying relevant multiplier '17, loss of dependency comes to Rs.9,63,900/- (Rs.56,700/- x 17). The claimants are entitled for total compensation of Rs.12,23,900/- (Rs.9,63,900/- + Rs.70,000/- Rs.1,50,000/- +

[1] (2011) 13 SCC 236
[2] 2009 ACJ 1298
[3] 2017(6) 170 (SC)
[4] 2018 Law Suit (SC) 904

Rs.40,000/-), which rounded to Rs.12,24,000/-. The compensation amount shall carry interest 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.7,00,000/- 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**[5] the compensation awarded can be more than the claim, the present appeal needs to be allowed. Respondents 1 and 2 are directed to deposit the compensation amount jointly and severally within three months from the date of this judgment. The claimants are entitled to withdraw the compensation amount soon after the deposit is made. 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 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: 18.09.2019
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[5] 2003(2) SCC 274