

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.960 OF 2006

JUDGMENT:

This appeal is filed by the appellant/2nd respondent/insurance company aggrieved by the Order and Decree dated 06.02.2006 passed in O.P.No.589 of 2003 by the V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, Red Hills, Hyderabad (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that 1st petitioner is the husband, 2nd petitioner is the daughter and 3rd petitioner is the son of the deceased-Smt.M.Suvarna. On 03.03.2002 at about 8.00 a.m., the deceased with her family members and tenant were started from Hyderabad to go to Basara in car bearing No.AP 12A 1972 and when the said car reached the outskirts of the Jangampally Village in front of Rice Mill on N.H.No.7, at about 10.00 a.m., the car driver drove the vehicle in a rash and negligent manner with high speed, without following the traffic rules and lost his control over the car and dashed to the compound wall of the Rice Mill. On account of which, the back door of the car opened and the deceased fell down and received grievous injuries all over the body. Immediately she was shifted

to the Government Civil Hospital, Kamareddy, Nizamabad District and she was succumbed to the said injuries while undergoing treatment in the hospital. The accident occurred due to the rash and negligent driving of the driver of the offending car. The deceased was hale and healthy at the time of the accident and she was aged about 46 years and doing tailoring and goldsmith work to assist her husband and she was earning an amount of Rs.3,000/- per month and the same was contributed to her family members and due to the said accident, the petitioners have lost their love and affection and further submitted that due to the said accident, the petitioners are mentally upset and also shocked. Hence, the petitioners filed the claim petition claiming compensation of Rs.3,00,000/- with interest @ 18% per annum, payable by both the respondents, being the owner and insurer of the offending car.

4. Before the Court below, the 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.W.1 and R.W.1 and the documentary evidence of Exs.A-1 to A-5 & Exs.B-1 & B-2, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending car and awarded total compensation of Rs.2,94,000/-, i.e., Rs.2,64,000/- towards loss of income,

Rs.15,000/- towards loss of consortium, Rs.2,000/- towards transportation charges, Rs.3,000/- towards funeral charges and Rs.10,000/- towards loss of love and affection, with interest @ 7% per annum from the date of petition till the date of realization, payable by both the respondents. Aggrieved by the said order, the appellant/2nd respondent/insurance company filed the present appeal.

6. Heard Sri E.Venugopal Reddy, learned standing counsel for the appellant/2nd respondent/insurance company. Perused the material record.

7. As per the evidence of P.W.1, the offending car belongs to the 1st respondent and the same has been taken by P.W.1, who is the husband of the deceased, on hire basis on the date of the accident to go Basara from Hyderabad.

8. The case of the appellant/2nd respondent/insurance company is that there is a gross violation of the insurance policy since the private owned vehicle cannot be used on hire or reward purpose and thus, the appellant/insurance company is not liable to pay the compensation and the liability cannot be fastened upon the appellant/insurance company.

9. Admittedly, in the light of the fact that the 1st respondent/owner has been using the crime vehicle in contravention of the terms and conditions under Ex.B-1, the 2nd respondent/insurance company is entitled to recover the

amount of compensation paid on behalf of the 1st respondent/owner from the 1st respondent/owner. Hence, the 2nd respondent/insurance company shall pay the compensation and recover the same from the 1st respondent/owner.

10. In view of the foregoing discussion, the judgment and decree dated 06.02.2006 passed in O.P.No.589 of 2003 by the V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, Red Hills, Hyderabad, is modified to the extent of directing the appellant/2nd respondent/insurance company to pay the compensation amount to respondents 1 to 3/claimants in the first instance, and recover the same from the 4th respondent/owner of the offending car. Except the said modification, the judgment and decree passed by the Court below shall remain unchanged.

11. Accordingly, the M.A.C.M.A. is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.AMARNATH GOUD, J

Date: 31st October, 2019

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