

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.1051 of 2006 and 4142 of 2008

COMMON JUDGMENT:

Both these appeals are arising out of the same order and the parties are one and the same. Hence, they are heard together and being disposed of by this common judgment.

MACMA.No.1051 of 2006 is filed by the claimants seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Mahabubnagar, *vide* order and decree dated 21.02.2006 in O.P.No.763 of 2002, while, MACMA.No.4142 of 2008 is filed by the Insurance company aggrieved by the very same award.

For the sake of convenience, hereinafter the parties will be referred to as arrayed in MACMA.No.1051 of 2006.

Appellant No.1 is the wife, appellant Nos.2 and 3 are the children and appellant No.4 is the mother of the deceased-Suryanarayana Reddy, respectively.

The brief facts of the case are that on 02.4.2002, the deceased and some other passengers were going to Mahabubnagar in a jeep bearing registration No.AP-22-T-7671 and at about noon, after crossing Dharmapur bus stage, the driver drove the said jeep in a high speed and negligently applied sudden break, as a result of which he lost control over the vehicle and it ran towards right side and dashed an auto bearing No.AP-22-U01986 which was coming in opposite direction, and turned turtle, due to which, the deceased

died instantaneously and other passengers sustained injuries. In this connection, a case was registered and the charge sheet was filed. Therefore, the claimants filed the aforesaid OP claiming compensation of Rs.15,00,000/- against respondent Nos.1 and 2, the owner and insurer of the aforesaid auto, respectively, for the death of the deceased.

Before the Tribunal, respondent No.1 remained *ex parte*. The second respondent filed its counter denying the averments of the claim petition and contended that the accident occurred due to the negligence of the deceased who was travelling as a gratuitous passenger but not driver of the offending jeep; that it is not liable to pay compensation; that there is negligence on the part of the driver of the auto in causing the accident; and that the amount claimed is excessive and prayed to dismiss the claim petition.

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 drivers of the jeep and auto and held negligence on the part of the drivers of the jeep and auto as 50% each and accordingly, awarded compensation of Rs.8,60,700/- with interest @ 7.5% per annum from the date of the petition till the date of realization.

On behalf of the appellants, P.Ws.1 and 2 were examined and Exs.A-1 to A-10 are marked. On behalf of the respondents, no oral evidence was adduced and Ex.B-1-Copy of insurance policy was marked.

Heard Sri K.Venkat Ram Reddy, learned counsel for the appellants-claimants, and Sri Kota Subba Rao, learned counsel for respondent No.2-insurance company.

Learned counsel for the appellants-claimants submitted that the Tribunal erred in deducting 1/3rd of the income of the deceased towards his personal expenses and it ought to have deducted 1/4th towards his personal expenses and prayed, to allow the appeal filed by the appellants/claimants.

Sri Kota Subba Rao, learned counsel for the insurance company, contended that the compensation awarded by the Tribunal is excessive and prayed to dismiss the appeal filed by the claimants.

As seen from the record, there are four dependants to the deceased. Therefore, as per *Smt. Sarla Varma Vs. Delhi Transport Corporation*¹, if 1/4th of the income of the deceased (i.e. 1/4th of Rs.17,550/-) is deducted towards his personal expenses, his monthly contribution to his family comes to Rs.13,163/- and multiplying the same by '12', the annual dependency comes to Rs.1,57,956/-. Having regard to the age of the deceased, by applying the appropriate multiplier '13', the loss of incomes comes to Rs.20,53,428/- (Rs.13,163x12x13).

The Tribunal has not granted any compensation under the conventional charges. As per the judgment of the Supreme Court in

¹ 2009 (6) SCC 121

National Insurance Co. Ltd. Vs. Pranay Sethi², the appellants are entitled to a sum of Rs.70,000/- under the said head.

As per **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others**³, appellant Nos.2 and 3 being the children of the deceased are entitled to Rs.50,000/- each towards loss of love and affection. In all, the total compensation comes to Rs.22,23,428/- (Rs.20,53,428/- + Rs.1,00,000/- + Rs.70,000/-). However, as there is negligence on the part of the driver of the jeep only to 50%,¹ if the total compensation is slashed by 50%, the appellants are entitled to Rs.11,11,714/-.

In the result, MACMA.No.1051 of 2006 is allowed enhancing the compensation amount awarded by the Tribunal from Rs.8,60,700/- to Rs.11,11,714/-. The enhanced compensation shall carry interest @ 9 % per annum from the date of the petition till the date of realisation. The claimants shall pay the deficit Court fee on the enhanced compensation. Consequently, MACMA.No.4142 of 2008 is dismissed.

Pending Miscellaneous Petitions, if any, shall stand disposed of. No order as to costs.

JUSTICE T.AMARNATH GOUD

25th September, 2019
dr

² 2017(6) ALD 170 (SC)

³ 2018 LawSuit (SC) 904