

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.No.1799 of 2009 & Cross Objections SR No.40437 of 2009

COMMON JUDGMENT:

M.A.C.M.A.No.1799 of 2009 is filed assailing the judgment and award dated 28-01-2009 passed in O.P.No.303 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad.

2. Brief facts of the case are that on 07-06-2005, at 2.00pm, when the deceased-K.Malkaboi was travelling in a jeep bearing No.AP-25/U-285 from Chandur to Nizamabad and when he reached near Sri Venkateshwara Swamy Temple, Mosra village shivar, one RTC bus bearing No.AP-10/Z-6810 driven by its driver at high speed in a rash and negligent manner, dashed against their jeep from opposite direction, due to which, the deceased died on the spot. The claimants, who are wife, two children and father of the deceased, have filed the claim petition claiming compensation of Rs.5,00,000/- on account of the death of the deceased.

3. Second respondent – RTC filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the negligence of the petitioner and that the RTC is not liable to pay any compensation and that the compensation claimed is on higher side.

4. Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle and allowed the petition in part by awarding compensation of Rs.4,36,000/- and directed respondents – RTC to pay the said amount with interest at 9% p.a.

5. Being aggrieved by the award and judgment, the RTC filed MACMA No.1799 of 2009 and the claimants filed Cross Objections SR No.40437 of 2009 being not satisfied with the said amount of compensation.

6. Heard the learned Standing Counsel for the appellant-RTC and the learned counsel for the claimants.

7. Learned Standing Counsel for the appellant-RTC contends that the accident occurred due to negligent driving of the deceased only and therefore the award passed by the Tribunal is not in accordance with law. Hence, the impugned order may be set aside.

8. Learned counsel for the claimants contends that the Tribunal erred in granting compensation under the head of loss of income and also ignored in granting compensation under the head of conventional. Hence, the appeal filed by the RTC may be dismissed by enhancing the fair compensation.

9. Admittedly, as contended by the claimants, the Tribunal erred in taking personal deduction at $1/3^{\text{rd}}$ by taking salary of the deceased at Rs.4,000/- per month i.e. Rs.2,667/- per month. Multiplier

is taken rightly as '13'. Then the Tribunal granted compensation under this head an amount of Rs.4,16,000/- (2667 x 12 x 13). But according to the age of the deceased and considering the number of dependents, the contribution of the deceased can be taken as 1/4th towards personal deduction instead of 1/3rd as per the decision of the Supreme Court in **New India Assurance Company Limited Vs. Kalpana (Smt.)**¹. Then the income of the deceased comes to Rs.4,68,000/- (3000 x 12 x x 13).

10. Further, the Tribunal granted Rs.15,000/- to the wife of the deceased towards loss of consortium. But as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi**², the wife of the deceased is entitled for an amount of Rs.70,000/- under the conventional head. Hence, the said amount is granted to the claimants.

11. The rest of the award granted by the Tribunal shall remain unchanged. Therefore, the claimants are entitled for total compensation of Rs.5,43,000/- (i.e. Rs.4,68,000/- (+) Rs.70,000/- (+) Rs.5,000/-) (Rupees Five Lakhs Forty Three Thousand only) as total compensation.

12. With the above modification, M.A.C.M.A.No.1799 of 2009 is dismissed and Cross Objections SR No.40437 of 2009 are allowed. The claimants are directed to pay deficit Court Fee. The enhanced amount of compensation shall carry interest at 7% per annum. The appellant-RTC is directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of

¹ (2007) 3 S.C.C. 538

² 2017 (6) 170 (SC)

receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the entire amount. No costs.

13. As a sequel, miscellaneous petitions pending in these appeals, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 06.8.2019.

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