THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 555 OF 2011

JUDGMENT:

This appeal is directed by the insurance company against the judgment and decree dated 16.12.2008 passed in O.P.No.417 of 2006 by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, (for short 'the Tribunal) awarding compensation of Rs.8,02,125/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realization and making respondent Nos.1 and 2 jointly and severally liable to pay the compensation holding that the accident occurred due to rash and negligent driving of the driver of the tipper lorry, insurance policy was subsisting on the date of accident and the claimants are entitled for the compensation, as against the claim of Rs.10,00,000/-.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the Tribunal.

3. The brief facts of the case are as follows:

The claimants are wife, son and daughter of the deceased-Ch.Srikanth. On 26.06.2005 at about 03.30 PM, the deceased along with his friend, driving motorcycle bearing No. AP 25L 0841, from Kanteshwar to Hotel Mayur at Godown Road, Nizamabad, when they reached near Government Polytechnic College, one tipper lorry bearing No. AP 1 W 0202 came at high speed in a rash and negligent manner, dashed the motorcycle of the deceased, for which he fell down and the wheel of the tipper lorry rolled over his right hand, due to which he sustained crush injury to right hand and other grievous injuries on head and other parts of the body, he was taken to Government Hospital, Nizamabad, after first aid, he was referred to NIMS Hospital, Hyderabad and at NIMS his right hand three fingers were amputated and again he was admitted in NIMS hospital on 17.11.2005, underwent operation on 21.11.2005, due to post operative complications, he died on 22.11.2005, while undergoing treatment. At the time of accident, the deceased was hale and healthy and was working as Cashier in IBP Petrol Pump, Phulong, Nizamabad and earning Rs.110,000/- per month.

4. Before the tribunal, in order to prove the case of the claimants, PWs.1 to 4 were examined and marked Exs.A1 to A.31. On behalf of the respondents, RW.1 was examined and marked Ex.B.1 – insurance copy.

5. Learned standing counsel for the insurance company submitted that the accident occurred due to negligence on the part of the rider of the motorcycle as he drove the vehicle without any care and driving license; and that the tribunal erred in finding that the deceased died due to injuries suffered in the accident, when he died due to cardiac arrest; and that the deceased died after five months of the accident; and that there is no nexus between the injuries and death; and that no postmortem was conducted since the death is not due to injuries suffered in the accident and there is no clear cut evidence to show that the deceased died due to medical negligence or injuries sustained by the deceased and

hence, the liability cannot be fastened on the insurance company and prayed to allow the appeal by dismissing the claim petition.

6. Learned counsel for the claimants contended that the deceased suffered injuries to his right hand fingers and in the process of prolonged treatment, due to injuries sustained in the accident occurred on 26.06.2005, the deceased died and hence, the order as rightly passed by the tribunal is well considered and needs no interference of this Court and hence, prayed to dismiss the appeal.

7. Admittedly, PW.3, who is pillion rider on the motorcycle at the time of accident, is the eye witness. Ex.A.1-FIR and Ex.A.2-charge sheet discloses that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. Exs.A.2 to A27 discloses that the deceased suffered injuries to his right hand fingers and treated in Government Hospital, Nizamabad, operation was conducted twice to his right hand fingers at NIMS, Hyderabad. PW.2-doctor, who treated the deceased deposed that he examined the deceased that right little finger, right thumb of the deceased were amputated, the patient was discharged from the hospital on 09.07.2005 and again admitted on 17.11.2005 for correction of post traumatic thumb loss with deformity of right hand by way of plastic surgery and underwent surgery on 21.11.2005; and that during the course of treatment the deceased died on 22.11.2005 in their hospital. Therefore, it can be presumed that the deceased died due to injuries sustained in the accident occurred on 26.06.2005. Ex.B.1 copy of insurance policy shows that the same

is in force on the date of accident. The evidence of PW.4, who is manager of IBP Petrol Pump shows that the petitioner was working as Cashier and getting Rs.3,149.50 per month as salary. Exs.A.28 to A.30 are the pay slips of the deceased. Having regard to the facts and circumstance of the case, the order passed by the tribunal is well considered and needs no interference of this Court and accordingly, the appeal is liable to be dismissed.

8. In view of the above, the appeal filed by the insurance company is dismissed confirming the judgment and decree dated 16.12.2008 passed in O.P.No.417 of 2006 by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 26-12-2019
kvrm