THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 721 OF 2006

JUDGMENT:

This appeal is directed by the claimants against the order and decree dated 20.01.2006 passed in M.V.O.P.No.73 of 2003 by the Special Judge for the trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad (for short 'the Tribunal), whereby the tribunal granted compensation of Rs.1,97,000/- in a motor vehicle accident that occurred on 03.10.2002 at about 1845 hours while the deceased Dinesh Kumar Yadav was going by Scooter bearing No.AEU 113 near Tarband Grave Yard, the driver of the bus bearing No. AP 9 W 870 drove it in a rash and negligent manner at high speed and dashed against the deceased from his backside and consequently, the deceased fell down on the road and the bus ran over him, he was shifted to Gandhi Hospital, Secunderabad and that the duty Medical Officer declared the deceased as dead, against the claim of Rs.5,00,000/-.

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

3. Before the tribunal, the 1st respondent remained exparte and the 2nd respondent filed its counter denying the claim petition.

4. In order to prove the case of the claimants, before the tribunal, PWs.1 to 3 were examined and marked Exs.A1 to A.9 and Ex.X.1 to X.3. On behalf of the respondents RW.1 was examined and marked Ex.B.1 and B.2

5. Basing on the material available on record, the tribunal has rightly taken the age of the deceased as 35 years, as per Ex.A.3-inquest report and A4-postmortem report. The tribunal granted compensation of Rs.1,97,000/- with interest at 6% per annum from the date of petition till the date of realization. As per evidence of RW.1 coupled with Ex.B.2-agreement between the 1st respondent the 3rd respondent discloses that the 1st respondent hired the vehicle along with the driver to the 3rd respondent and that the 1st respondent was bound to insure his vehicle and that he was bound to meet the accidental claims and that the 3rd respondent is not liable to pay any compensation and made respondents 1 and 2 liable to pay compensation.

6. Learned counsel for the claimants submitted that the compensation granted by the tribunal is very meager and that multiplier taken by the tribunal is wrong and that the

tribunal disbelieved the version of PW.1 that the income fixed by the tribunal is also very less and that when the petitioner is doing business, the income of the deceased has to be taken as Rs.5,000/- per month and hence, prayed to grant just and proper compensation.

7. Learned standing counsel for the insurance company submitted that the order passed by the tribunal is well considered in all aspects and needs no interference of this Court and prayed to dismiss the appeal.

8. There is no dispute with regard to the manner of accident and involvement of the vehicle. PW.1 stated that the deceased was doing business in the name of style of M/s Sai Building Material Supplier and earning Rs.5,000/- per month and accordingly, the same is considered. As per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another[1],** since the claimants are four in number, 1/4th of personal expenses have to be deducted. As per the decision of **Sarala Verma's** case referred supra, as per Exs.A.3-inquest report to A.4-postmortem report, the age of the deceased can be taken as 35 years, the relevant multiplier applied is '16'. The deceased is self employed, as per the decision of the apex Court in

[1] 2009 ACJ 1298

National Insurance Company Limited v Pranay Sethi[2] the claimants are entitled for 40% future prospects when the age of the deceased is 35 years and Rs.70,000/- under conventional heads can be granted which is just and proper. As per the decision of the Apex Court in **Magma General Insurance Co.Ltd. v Nanu Ram Alias Chuhru Ram**[3]**,** the minor children i.e. two sons and one daughter of the deceased are entitled for Rs.50,000/- each as filial. The annual income of the deceased comes to Rs.63,000/- (Rs.5,000/- minus ¼ (Rs.1,250/-) plus 40% (Rs.1500/-) x 12). Applying relevant multiplier '16, loss of dependency comes to Rs.10,08,000/-/- (Rs.63,000/- x 16). Thus, the claimants are entitled for total compensation of Rs.12,28,000/- (Rs.10,08,000/- + Rs.70,000/- + Rs.1,50,000/-). The enhanced compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realization. Though the claim is made for Rs.5,00,000/- 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**[4] 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 within three months from the date of this judgment. The

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[2] 2017(6) 170 (SC)
[3] 2018 Law Suit (SC) 904
[4] 2003(2) SCC 274

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: 23-10-2019
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