

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. NO.1478 OF 2015

JUDGMENT:

This appeal is preferred by the appellants/Insurance Company questioning the judgment of the Chairman, Motor Accidents Claims Tribunal (VII Additional District Judge), Warangal (for short, the Tribunal) in M.V.O.P.No.113 of 2011, dated 18.11.2014.

2. The brief facts of the case are that respondent No.1 is the claimant, who is the brother of the deceased, and respondent No.2 is the driver of lorry bearing No.AP 16 T 6075. On 04.05.2005 at 6.10 a.m., while the brother of claimant No.1 (deceased) was proceeding in TATA Sumo bearing No.MH 31 G 9822, respondent No.2 drove the lorry in a rash and negligent manner with high speed proceedings towards Nirmal side carrying cattle dung, dashed the Tata Sumo, resulting the brother of claimant No.1 and other inmates died on the spot. Respondent No.1 herein filed the aforesaid MVOP against the owner of the lorry (respondent No.2 herein) and the insurer of the auto (appellants herein), claiming compensation of Rs.8,00,000/- for the death of the brother of claimant No.1 in the said accident.

3. Before the Tribunal, driver of the lorry, remained *ex parte*. The appellants-Insurance Company filed a counter denying the allegations and contended that the amount claimed by the claimant is highly excessive and the owner and insurer of the TATA Sumo are also necessary parties to the proceedings and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

4. 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 driver of the lorry and awarded total compensation of Rs.1,75,000/- under the following heads with interest at the rate of 7.5% per annum

Towards loss of love and affection	Rs.	1,00,000/-
Towards loss of estate	Rs.	50,000/-
Towards funeral expenses	Rs.	25,000/-
TOTAL :		<u>Rs. 1,75,000/-</u>

Aggrieved by the said order, the appellants/Insurance Company filed the present appeal.

5. Heard.

6. Learned counsel for the appellants submits that respondent No.1 is not dependant on the deceased, but the Tribunal erroneously granted compensation to respondent No.1, which is on higher side. Therefore, the appeal is liable to be allowed.

7. On perusal of the record, it is not in dispute that respondent No.1 is the brother of the deceased and he is not dependant on the deceased. But, admittedly, respondent No.1 is entitled to Rs.30,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**¹ and that respondent No.2, being the brother of the deceased, is entitled to Rs.40,000/- towards loss of

¹ 2017(6) ALD 170 (SC)

Filial consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**².

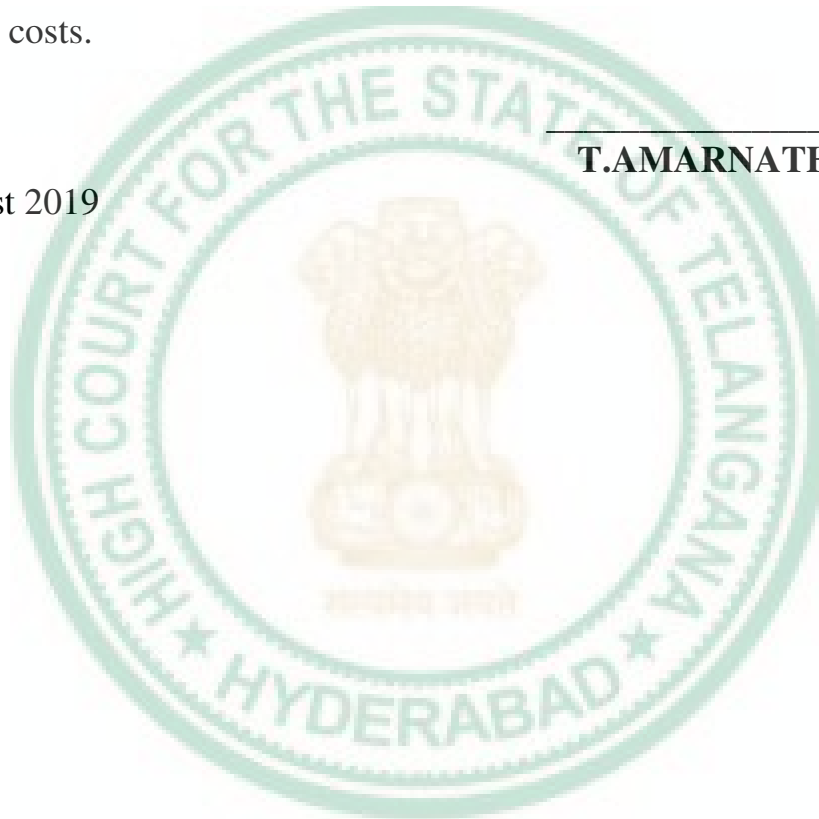
7. Accordingly, the Motor Accident Civil Miscellaneous Appeal is allowed part, reducing the compensation amount awarded by the Tribunal from Rs.1,75,000/- to Rs.70,000/- with same rate of interest at 7.5% per annum from the date of petition till realization

Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

30th August 2019

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T.AMARNATH GOUD, J



² 2018 Law Suit (SC) 904