THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.No.1275 of 2015

JUDGMENT:

1 The respondent – Insurance Company filed the present appeal under Section 173 of M.V.Act challenging the award and judgment dated 07.7.2014 passed in M.V.O.P.No.371 of 2012 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for trial of cases under S.Cs and S.Ts (PoA) Act-cum-Additional District Judge, Khammam, wherein and whereby an amount of Rs.7,00,000/- was awarded as compensation to the claimants.

2 For the sake of convenience, parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 18.11.2010 at about 07.30 PM, one Kuram Bodaiah (hereinafter referred to as 'the deceased') was waiting at Mittagudem bus stop by the side of the road. In the meantime, TATA Magic Van bearing No.AP-20/TV-0953 (hereinafter referred to as 'the crime vehicle') while going from Manuguru to Aswapuram, driven by its driver in a rash and negligent manner and dashed against the deceased, resulting in his instantaneous death. The deceased was aged about 30 years and was earning Rs.200/- per day by doing cooli work. First petitioner is wife, petitioner Nos.2 to 4 are minor children and petitioner Nos.5 and 6 are parents of the deceased. The first respondent is the owner and the

second respondent is the insurer of the crime vehicle. Hence the petitioners filed the claim petition claiming compensation of Rs.7.00 lakhs from both the respondents jointly and severally.

5 The first respondent remained *ex parte*. Second respondent filed written statement denying the material averments made in the petition, inter *alia* contending that the first respondent-driver of the crime vehicle has no valid licence to drive the vehicle. The amount of compensation claimed by the petitioners under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 After appropriate issues being framed, on behalf of the petitioners P.W.1 was examined and Exs.A.1 to A.6 were marked. On behalf of respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.6 were marked.

7 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the TATA Magic Van bearing No.AP-20/TV-0953 which resulted in the death of the deceased and allowed the petition by awarding compensation of Rs.7,00,000/- with interest at 7% p.a from the date of filing of the petition till the date of realisation, fastening liability of payment of compensation on 2nd respondent-insurer only. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent insurance company preferred the present appeal.

8 Heard the learned counsel for the respondent – insurance company and the learned counsel for the petitioners.

9 Though the second respondent took a plea that the first respondent has no valid licence to drive the crime vehicle, the Tribunal has not accepted the said contention holding that there is no destination between commercial vehicle and non-transport vehicle and separate skill does not require to drive any commercial vehicle.

10 The Tribunal by taking into consideration the age of the deceased as 30 years and also the fact that the petitioners being the wife, children and parents of the deceased, who are entitled for a consortium, allowed the petition and awarded an amount of Rs.7.00 lakhs as total compensation to the petitioners, which, in my considered view, is not just and proper.

11 The Tribunal took the income of the deceased as Rs.200/-per day. But the claimants could not prove the income of the deceased by letting cogent and concrete evidence. Since it is a settled law that where there is no proof of income, the Courts are taking notional income of Rs.3,000/- p.m. But keeping in view that, in the present case, there are six dependents, this Court feels that the reasonable income per month can be taken as Rs.4,000/-. In that view of the matter, if $1/4^{th}$ is deducted towards personal expenditure of the deceased, his contribution to the family would be Rs.3,000/- p.m. The appropriate multiplier for the age group of 30 years is 17. Therefore, the

compensation to which the petitioners are entitled to is Rs.3,000/- X 12 X 17 = Rs.6,12,000/-.

11 Accordingly the appeal is allowed in part modifying the award passed by the Tribunal in so far as the compensation payable to the petitioners from Rs.7.00 lakhs to Rs.6,12,000/-. Since the first respondent is the owner and driver of the crime vehicle which was insured with the second respondent, both the respondents are jointly and severally liable to pay the same with interest at 7% p.a. from the date of accident till date of realisation. No order as to costs.

T. AMARNATH GOUD, J.

Dt: 22.7.2019
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