

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No. 129 of 2008

JUDGMENT:

This appeal is directed by the National Insurance Company Limited against the award dated 07.09.2007 passed by the Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge (Mahila Courts), Hyderabad (for short 'the Tribunal), in O.P.No.2614 of 2004 whereby the Tribunal awarded compensation of Rs.19,60,000/- together with interest @ 7% per annum from the date of petition till the date of realization against the claim of Rs.30,00,000/- on account of the death of the deceased in a motor accident that occurred on 01.01.2004 at about 05.30 pm, due to the rash and negligent driving by the driver of lorry bearing No.MP 06 E 0208, which came behind and dashed against the deceased motor cycle.

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

It is the contention of learned standing counsel for Insurance Company that the accident occurred, when APSRTC bus was stopped at a bus stop in order to receive boarding passengers, the deceased also stopped his two wheeler behind that RTC bus i.e. on the left side of the road, and hence question of rash and negligent driving of the driver of the lorry and hitting the deceased from his back on the left

side does not arise, that the tribunal erred in believing the evidence of PW.1, driver of the RTC bus, who sat on his seat is not in a position to assess the speed, rash and negligent driving of the driver of the lorry and that the passengers were boarding into the bus from the left side and that Exs.A.7 and A.8 do not help with regard to the income of the deceased and that no evidence is adduced to prove that the deceased is doing transport business and prayed to allow the appeal by setting aside the award.

Learned counsel for the claimants submitted that the award passed by the tribunal is well considered and also submitted that claimant No.4 died during pendency of the appeal and hence, his grand children i.e. claimants 2 and 3 may be permitted to withdraw the share of claimant No.4 as his legal heirs as per Will executed by him.

There is no dispute with regard to the accident occurred and involvement of the vehicle. As per the documentary evidence i.e Exs.A.7 to A.9, A.12 the income of the deceased was proved and the tribunal well considered all aspects while granting compensation. This Court is inclined to give finding to the effect that claimants 2 and 3 may be permitted to withdraw the apportioned amount of claimant No.4, who died during pendency of the appeal. However, the parties are at liberty to take appropriate steps before the tribunal.

In view of the above the appeal is dismissed, confirming award dated 07.09.2007 passed by the Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge (Mahila Courts), Hyderabad, in O.P.No.2614 of 2004. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

05.08.2019
kvrn

T. AMARNATH GOUD, J

