THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1224 OF 2005
AND
M.A.C.M.A.No.503 of 2009

COMMON JUDGMENT:

The MACMA.No.1224 of 2005 is preferred by the appellant/2nd respondent/insurance company and MACMA.No.503 of 2009 is filed by the appellants/claimants questioning the order of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District, at L.B. Nagar, Hyderabad (for short, the Tribunal), in O.P.No.42 of 2000 dated 15.05.2003.

2. Since both the appeals are arising out of the same O.P., they are heard and disposed of by way of a common judgment.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The brief facts of the case are that the petitioners are the wife and minor son of the deceased Raju, who was aged 21 years and labourer earning Rs.3,000/- per month. On 21.03.1998, at 8.00 p.m., the deceased and other co-labourers were proceeding from their factory i.e., Mehar Metal Industry, Abdullapurmet, with chips to Chintalkunta to unload the same in Tipper bearing No.AP 31T-2212, and near Srinivasa Petrol Pump, the vehicle turned turtle due to high

speed and rash and negligent driving of the driver of the tipper. The deceased received fractures and also multiple injuries all over his body and he was treated in Kamineni Hospital till 09.04.1998 and the petitioners were informed that the fractures and injuries may not be cured and the treatment would be cost huge amount and so he was got discharged from Kamineni Hospital and he was shifted to native place. Subsequently, the deceased succumbed to injuries and died on 09.03.1999. The petitioners incurred huge amount towards medical treatment and sustained loss of support and loss of estate. Hence, the petitioners filed the claim petition claiming a compensation of Rs.3,50,000/-.

5. In the claim petition, the respondents filed separate counters denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

6. 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 crime vehicle and on the strength of the evidence of P.Ws.1 to 4 & R.W.1 and Exs.A-1 to A-17 & Exs.B-1 & B-3, the Tribunal has calculated the total compensation as Rs.4,41,420/- i.e., Rs.4,08,000/- towards loss of income and Rs.33,420/- towards medical expenses, but since the

claimants claimed only Rs.3,50,000/-, the Tribunal restricted the same to Rs.3,50,000/- and awarded an amount of Rs.3,50,000/- towards compensation with interest @ 9% per annum from the date of petition till the date of payment payable by the respondents jointly and severally. Aggrieved by the said order, the 2nd respondent/insurance company filed MACMA.No.1224 of 2005 and the petitioners/claimants filed MACMA.No.503 of 2009.

7. Heard.

8. The 2nd respondent/insurance company preferred MACMA.No.1224 of 2005 challenging the award passed by the Tribunal on the ground that the amount awarded by the Tribunal is excessive and more so, in the absence of any evidence showing proof of income and the death caused due to the injuries sustained. Originally the claim is made for Rs.3,50,000/- and the Tribunal though computed the compensation for an amount of Rs.4,41,200/-, has restricted the compensation to Rs.3,50,000/- as the claimants claimed only Rs.3,50,000/-, which is unjust, in the light of awarding just and fair compensation, as held by the Apex Court in the decision reported in **Nagappa v. Gurudayal Singh[1].**

9. Accordingly, the appeal filed by the petitioners/claimants in MACMA.No.503 of 2009 is allowed by fixing the just and fair compensation of Rs.4,41,200/- with

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[1] (2003) 2 SCC 274

interest @ 9% per annum from the date of petition till the date of realization, payable by both the respondents, as determined by the Tribunal and the appeal filed by the 2nd respondent/insurance company in MACMA.No.1224 of 2005 is dismissed. As the claimants claimed only Rs.3,50,000/-, they are directed to deposit deficit Court fee before the Tribunal. The respondents are directed to deposit the compensation amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as awarded by the Tribunal, subject to payment of deficit court fee. No order as to costs.

Miscellaneous petitions pending, if any, shall stand dismissed.

T.AMARNATH GOUD, J

Date: 18th October, 2019

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