

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.369 OF 2015

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the judgment and decree dated 28-11-2012 passed in M.V.O.P.No.280 of 2011 by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Karimnagar (for short, the Tribunal).

2. The brief facts of the case are that on 12.03.2010, while the deceased Ragula Mallesh working as cleaner of a tipper AP01W 4447 and on the instructions of the driver, when he was trying to put a boulder in front of the front tyre to stop the vehicle, the driver of the tipper drove the same in a rash and negligent manner, hit the deceased and made him to crush between the above tipper and other tipper and that he died on the way to the hospital. The claimants filed the above O.P., claiming compensation of Rs.4,50,000/- for the death of the deceased.

3. The first respondent remained ex parte and respondent No.2 filed his counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the claimants is excessive, exorbitant, imaginary and out of proportion and sought to dismiss the petition.

4. During the course of trial, the claimants examined P.W.1 and got marked Exs.A1 to A4. On behalf of the respondents, no oral evidence was adduced, but Ex.B1 insurance policy was marked.

5. After considering the material on record and the evidence adduced by the claimants, the Tribunal allowed the O.P. in part and awarded an amount of Rs.50,000/- with interest at 9% p.a. from the date of petition till the date of realization payable by the respondents 1 and 2 jointly and severally. Being aggrieved by the quantum of compensation awarded by the Tribunal, the claimants preferred the present appeal.

6. Heard.

7. The deceased was a cleaner of the tipper and died in the accident. The claim made by the father and mother of the deceased under Section 163-A of Motor Vehicles Act, 1989 for Rs.4,50,000/- was converted to Section 140 of the Act and an amount of Rs.50,000/- was granted.

8. It is argued by the learned counsel appearing for the claimants that in the light of the judgment of the Apex Court in **Shivaji Vs. Divisional Manager, United India Insurance Co.Ltd.**¹, wherein it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of victim to counter a claim for

¹ 2018 ACJ 2161

compensation. He further contended that as against the claim of Rs.3,300/- per month towards income, in the absence of proof of income, a notional income of Rs.3,000/- ought to have been taken into consideration as the deceased was working as a cleaner and was aged 19 years and the appellants are also entitled for future loss of estate and other conventional heads.

9. Considering the arguments advanced on behalf of the appellants, this Court feels it just and proper to take into consideration the income of the deceased at Rs.3,000/- per month as notional income in the light of the judgment of the Apex Court in **New India Assurance Company Limited V. Kalpana (Smt)**². Accordingly, the income of the deceased is fixed at Rs.36,000/- per annum. Since the deceased died unmarried, 50% of his income should be deducted towards personal expenses and the income of the deceased would come to Rs.18,000/- per annum and the appropriate multiplier is 18 since the deceased died at the age of 19 years. Hence, the compensation under the head loss of income comes to Rs.3,24,000/- (Rs.18,000/- x 18). In the light of the judgment of the Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³, the appellants are entitled to Rs.30,000/- under other conventional heads, since the deceased died unmarried.

9. Accordingly the appeal is allowed in part, granting compensation of Rs.3,54,000/- with interest at the rate of 7.5%

² (2007) 3 SCC 538.

³ 2017(6) ALD 170 (SC)

per annum from the date of filing of the petition, till the date of realisation against respondents 1 and 2 jointly and severally. Miscellaneous petitions pending if any shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 21-01-2019.
Shr