

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.648 OF 2013

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 25.09.2012 passed in O.P.No.879 of 2006 by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge (FTC), Nizamabad (for short, the Tribunal).

2. The brief facts of the case are that on 27.03.2006 at about 1.30 A.M., the claimant along with his wife were proceeding from Tirumala Talkies Chowrasta by walk and when they reached Chirudu Hanuman Mandir, Kotagally, Nizamabad town, suddenly a Maruti Van bearing No.AP10G 8490, driven by its driver in a rash and negligent manner and at high speed, dashed the claimant, as a result of which, he received fracture of 3, 4, 5 of metatarsals of right foot, injuries to both legs, head injury and multiple grievous injuries all over his body. Immediately, he was shifted to Government Hospital, Nizamabad, where he was treated by doctors for fracture injuries. He filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of Maruti van, respectively, claiming compensation of Rs.1,00,000/- for the injuries sustained by him.

3. During the pendency of the above O.P., the claimant No.1 died, and his legal representatives i.e., petitioner Nos. 2 to 5 were brought on record. They contended that claimant No.1 died on account of the injuries sustained by him and therefore, they claimed compensation of Rs.5,00,000/-.

4. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 Maruti van, and awarded a total compensation of Rs.58,200/- with interest @ 7% per annum, i.e., Rs.30,000/- for two grievous injuries, Rs.13,200/- for medical expenses, Rs.15,000/- towards pain and suffering, and held that claimant No.1 has not died on account of the injuries sustained by him. Dissatisfied with the order passed by the Tribunal, the appellants filed the present appeal, seeking enhancement of the compensation.

5. Heard.

6. Sri Azar Sravan Kumar, learned counsel appearing for the appellants submitted that the Tribunal failed to consider that the injured was a vegetable vendor and earning Rs.10,000/- per month and that claimant No.1 died on account of the injuries sustained by him and the Tribunal awarded a meager amount, which needs to be enhanced.

7. Sri Challa Srinivasa Reddy, learned counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

8. Since the injured-first claimant (deceased) sustained two fractures, this Court feels that he would have taken bed rest for at

least two months and he lost earnings for the said period. As the first appellant is a vegetable vendor, the Apex Court in **Syed Sadiq Vs. United India Insurance Co.**¹, held:

“There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising price in agricultural produce, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.”

Accordingly, this Court feels that it is just and proper to award Rs.13,000/- towards loss of earnings for two months and Rs.2,000/- towards extra nourishment. Except the above modification, the order passed by the Tribunal remains unchanged.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.58,200/- to Rs.73,200/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 21.08.2019
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¹ 2014 ACJ 627