

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 1603 OF 2017

JUDGMENT:

This appeal is directed against the judgment and decree dated 20.02.2017 passed in O.P.No.198 of 2011 by the Motor Accidents Claims Tribunal-cum-III Additional District, Asifabad (for short 'the Tribunal'), whereby the Tribunal granted compensation of Rs.15,09,500/- with interest @ 9% per annum from the date of petition till the date of realization, as against the claim of Rs.38,00,000/- on account of the death of I.Ravinder.

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. Learned standing counsel for the insurance company contended that the claimants failed to prove that the accident occurred due to rash and negligent driving of the tractor and that the petition is not maintainable under Section 166 of the M.V. Act and gravely erred in treating the petition filed under Section 163-A of the M.V. Act and hence, when the tribunal comes to conclusion that no case has been made out for awarding compensation under Section 166 of the Act, the tribunal cannot award compensation under Section 163-A of the Act as held by the decision of the Apex Court in **Deepal**

Girishbhai Soni and others v United India Insurance Company Limited¹ and that the tribunal erred in taking the income of the deceased, future prospect and deducting personal expenses of the deceased and that the interest awarded by the tribunal is also on higher side.

4. Learned counsel for the respondent/claimant contended that for better appreciation remand the matter to the tribunal.

5. Having regard to the facts and circumstances of the case and on submissions of the learned counsel, it is apparent from the record that the requirement under Section 166 of the M.V.Act proving rash and negligent driving has not been proved as rightly observed by the tribunal in issue No.1. However, converting Section 166 of the MV.Act to 163-A of the M.V.Act and awarding compensation was unjust in the absence of any application and that the orders passed by the tribunal in converting the proviso is sue motto. Therefore, this appeal is allowed setting aside the judgment and decree dated 20.02.2017 passed in O.P.No.198 of 2011 by the Motor Accidents Claims Tribunal-cum-III Additional District, Asifabad and remanded to the tribunal for fresh disposal on merits by conducting fair trial and basing on the oral and

¹ 2004 ACJ 934

documentary evidence available on record after giving opportunity to both sides. Since the accident pertains to the year 2011, the tribunal is directed to dispose of the matter as expeditiously as possible. It is open for both parties to raise any other grounds available before the tribunal. The tribunal is at liberty to frame any other issue, if so required. There shall be no order as to costs.

Miscellaneous petitions if any, in this appeal shall stands dismissed.

18.10.2019
kvrn

T.AMARNATH GOUD, J

