THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.21 OF 2017

JUDGMENT:

This appeal is preferred by the appellant/insurance company questioning the order of the Motor Accident Claims Tribunal-cum-Special Sessions Judge for Trial of SCs/STs (POA) Cases-cum-Additional District Judge, Nalgonda (for short, the Tribunal) in M.V.O.P.No.134 of 2010, dated 30.06.2016.

2. The brief facts of the case are that respondent No.1 is the wife and respondent No.2 is the son and respondent No.3 is the mother of the deceased, Bandaru Yadaiah. On 21.12.2009 at about 1.30 pm., while the deceased was going to Mandal Revenue Office from his house on Hero Honda bearing No.AP24M 8772, and when he reached near the MRO Office, Chityal, a lorry bearing No.MP19D 9297, came at high speed and in a rash and negligent manner from his behind and dashed his motorcycle. In the said accident, the head of the deceased was completely damaged, due to which, the deceased died on the spot. Respondent Nos.1 to 3 herein filed the aforesaid MVOP against the owner of the lorry (respondent No.4 herein) and the insurer of the lorry (appellant herein), claiming compensation of Rs.20,00,000/- for the death of the deceased.

3. Before the Tribunal, owner of the lorry, remained *ex parte*. The appellant-insurance company filed counter

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.

4. 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 lorry and awarded total compensation of Rs.16,05,004/- under various heads, with interest at the rate of 8% per annum. Aggrieved by the said order, the appellant/insurance company filed the present appeal.

5. Sri T.Mahender Rao, learned Standing Counsel appearing for the appellant-insurance company, submitted that the Tribunal failed to appreciate that the driver of the crime vehicle was not having valid driving license; that awarding of compensation and fastening the liability on the insurer is bad; that the Tribunal erred in taking the gross income of the deceased for the year 2009-2010 as Rs.1,90,000/- per annum, instead of taking the average for income of three years, for the purpose of estimating the loss of dependency; and that the Tribunal erroneously granted a total sum of Rs.85,000/- towards conventional heads instead of Rs.70,000/- as per as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs.**

Pranay Sethi[1]**.** On the above submissions, he prayed to allow the appeal by setting aside the order of the Tribunal.

6. Sri T.V.S.Kumar, learned counsel appearing for respondent Nos.1 to 3, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. As the deceased is a third party, the appellant-insurance company is liable to pay the compensation and hence, the contention of the learned Standing Counsel for the appellant-insurance company that as driver of the crime vehicle was not having valid driving license, the appellant is not liable to pay the compensation, is negatived.

8. Insofar as the contention of the learned Standing Counsel for the appellant-insurance company that the Tribunal ought to have taken the average of income of three years is concerned, it may be noted that there is no such binding legal precedent or law to that effect. Though Ex.A.8, income tax return for the year 2009-10 shows that the annual gross income of the deceased was Rs.1,94,910/-, the Tribunal rounded it off to Rs.1,90,000/-, instead of rounding off to Rs.1,95,000/-. It may be noted that normally rounding off is done to the nearest higher side. Therefore, going by such rounding off norm, the precise sum of Rs.1,94,910/- could have been rounded off to Rs.1,95,000/-, however, the Tribunal rounded off to Rs.1,90,000/-. In the circumstances,

[1] 2017(6) ALD 170 (SC)

as the present appeal is filed by the insurance company, this Court is not inclined to interfere with the finding of the Tribunal in that regard and the same is confirmed.

9. Coming to the conventional heads, the Tribunal granted Rs.50,000/- towards loss of estate and love and affection, Rs.5,000/- towards transport charges, Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of consortium, totaling to Rs.85,000/-, which is higher side. By following the law laid down in **Pranay Sethi**'s case (supra), this Court is inclined reduce the aforesaid sum of Rs.85,000/- to Rs.70,000/-. Except the same, the order of the Tribunal shall remain unchanged.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed reducing the compensation amount awarded by the Tribunal from Rs.16,05,004/- to Rs.15,90,004/-. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 03-01-2020
TJMR