

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 605 of 2013

JUDGMENT:

This appeal is filed by the injured claimant aggrieved by the order and decree dated 27.11.2012 in O.P.No.980 of 2010 passed by the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad FAC V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad (for short 'the tribunal'), whereby the tribunal granted compensation of Rs.9,21,000/- with interest @ 7.5% per annum from the date of petition till the date of realization.

2. The brief facts are that on 31.01.2010 at about 09.00 AM while the claimant traveling on the bore well Rig lorry bearing No.AP 28 AA 3178, when the lorry reached Errakunta thanda, outskirts of Kukkadam Village, the driver of the said lorry lost control over the steering due to rash and negligent driving, lorry went off the road and turned turtle, for which the claimant and other inmates of the said lorry sustained grievous injuries and then the claimant was admitted in Sai Sanjeevani Hospital.

3. Respondent No.1 set exparte, respondent No.2/Insurance Company filed counter before the tribunal denying the claim petition.

4. The tribunal examined PWs.1 to 5, marked Exs.A1 to A.13 on behalf of the claimant and no oral evidence was adduced on behalf of the Insurance Company, but marked Ex.B.1-insurance policy.

5. Learned counsel for the claimant contended that the compensation granted by the tribunal is very meager and needs interference of this Court and prayed to grant just compensation as per the decisions of the Apex Court.

6. Learned standing counsel for the insurance company contended that the order passed by the tribunal is well considered and needs no interference of this Court and prayed to dismiss the appeal.

7. There is no dispute with regard to the manner of accident. The claimant was working as labour on the said bore well Rig. The policy was in force at the time of accident. There is no evidence from the 2nd respondent that there is any violation of terms and conditions of the policy. Though the claimant doing labour on bore well rig, in the absence of proof of income, as per the decision of the Apex Court in **Ramachandrappa v Royal Sundaram Alliance Insurance Co. Ltd.**¹, notional income of Rs.4,500/- can be taken as monthly income and accordingly, the same is considered.

¹ (2011) 13 SCC 236

The claimant was aged about 22 years, as per decision of the apex Court in **National Insurance Company Limited v Pranay Sethi**², 40% towards future prospects is granted. The disability as rightly assessed by tribunal was confirmed. As per the evidence of PW.5-doctor and Ex.A.5-receipts of Sai Sanjeevini Hospital Rs.80,550/- is granted towards medical expenses as against Rs.40,000/- granted by the tribunal. Since the age of the claimant was 22 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**³, the relevant multiplier applicable is '9'. Applying relevant multiplier, future prospects, disability, the claimant is entitled for compensation of Rs.11,69,190/- (Rs.4,500/- x 12(Rs.54,000/-) x 18 (Rs.9,72,000) x 80/100 (Rs.7,77,600/-)) + 40% (Rs.3,11,040/- + Rs.80,550/-), which rounded to Rs.11,69,000/-. The enhanced compensation shall carry interest @ 7.5 % per annum from the date of petition till the date of realization. The claimant is entitled to withdraw the compensation amount soon after the deposit is made. Though the claim is made for Rs.10,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in

² 2017(6) 170 (SC)

³ 2009 ACJ 1298

Nagappa v Gurudayal Singh⁴ the compensation awarded can be more than the claim, the present appeal needs to be allowed. The claimant has to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimants cannot be permitted to execute for the enhanced amount.

8. In view of the above, the appeal is allowed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 07.01.2020
kvrn

⁴ 2003(2) SCC 274