HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA. No.1623 OF 2006

JUDGMENT:

The instant appeal is preferred by the Oriental Insurance Company Limited, aggrieved of the order dated 10.11.2005, in O.P.No.443 of 2003 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VI Additional District Judge, Nizamabad at Kamareddy, whereby and whereunder, a sum of Rs.3,60,000/- was awarded to respondent Nos.1 and 2 herein towards compensation with interest at 9% per annum as against the claim of Rs.3,00,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 read with Rule 455 of A.P.M.V. Rules, 1989.

2. The appellant herein, which is insurer of the lorry bearing No.MP 17 A 1272, is respondent No.2 in the O.P., while respondent Nos.1 and 2 are parents, respondent No.3 is brother, respondent No.4 is sister of the deceased, Ladha Ashok, (who died in the accident) are claimants, and respondent No.5, who is owner of the lorry bearing No.MP 17 A 1272, is respondent No.1 in O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the

Tribunal and Ladha Ashok, who died in the accident, as deceased.

4. The facts in brief, are that on 13.01.2003, the deceased Ladha Ashok was travelling in an auto bearing No. AP 25 U 2505 along with others towards Bhikanoor to Ramayampeta and when the said auto reached Shakthi Timber Depot, a lorry bearing No. MP 17 A 1272 came in the opposite direction, driven at high speed in a rash and negligent manner, dashed the auto, due to which death of the deceased occurred. The petitioners claimed that the deceased was 21 years old, doing mason work and earning Rs.6,000/- per month. Therefore, the petitioners sought compensation of Rs.3,00,000/- against respondents 1 and 2, who are owner and insurer of the lorry respectively.

5. Respondent No.1, owner of the lorry, pleaded before the Tribunal that the respondent No.2 - insurance company is responsible to pay compensation since the lorry was insured with the 2nd respondent-insurance company under valid policy covering the risk of the parties on the date of accident.

6. The 2nd respondent resisted the claim raising various pleas and finally sought to dismiss the claim petition.

7. Basing on the said pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, on behalf of the petitioners, the 1st petitioner was examined as PW.1 and one Smt Polasa Brahmaramba, who is eye witness to the accident, was examined as PW.2 and marked Exs.A-1 to A-5 as regards their entitlement for the amount claimed. On behalf of respondent No.2 no witnesses were examined, but Exs.B.1 to B.7 were marked.

8. The Tribunal, on issue No.1, mainly basing on the evidence of PW2 and appreciating documentary evidence i.e. Exs.B.6 and B.7, rejected the contention as to contributory negligence on the part of the driver of the auto, in which the deceased was travelling and recorded a finding that only due to rash and negligent driving of the lorry driver, the accident had occurred, and, therefore, both the respondents are jointly and severally liable to pay the compensation to the claimants.

9. The aforesaid order is under challenge by the insurer contending that the Tribunal did not properly appreciate the documentary evidence i.e. Exs.B.6 and B.7; that there was no negligence on the part of the driver of the lorry; that on account of overloading of the auto, by the driver of the auto, in which the deceased was travelling, the accident had occurred; that the Tribunal

ought to have fixed 50% liability on the auto towards contributory negligence and ought to have granted 7.5% per annum interest instead of 9% per annum, and that the Tribunal was not right in awarding compensation more than the claim amount and, therefore, sought to modify the order and decree passed by the Tribunal.

10. Heard Sri A.V.K.S.Prasad, learned counsel for the

Insurance Company, appellant, and Sri Ch. Janardhan Reddy, learned counsel for the respondents 1 to 4, and perused the material available on record. Though notice sent to respondent No.5 was effected, none appears on his behalf, which makes no difference, since the insurance company was saddled with liability to compensate the petitioners.

11. Now the short point that arises for consideration is whether the Tribunal was right in deducting $1/3^{rd}$ as against half of the earnings of the deceased for computing loss of dependency and whether the Tribunal is right in adopting the multiplier '15' when the age of the deceased was 21 years?

POINT:

12. As seen from Exs.B.6 and B.7, it is clear that the lorry which was proceeding from Bhikanoor to

Ramayampeta, since the driver of the lorry was driving it at high speed in a rash and negligent manner, it went towards right side of the road and dashed against the auto, which was coming on the left side. Ex.B.7-rough sketch would also suggests that the accident occurred due to the rash and negligent driving of the driver of the lorry. Therefore, no negligence on the part of the driver of the auto can be viewed.

13. Concerning compensation awarded by the Tribunal as agitated to in the grounds of appeal, the Tribunal awarded Rs.3,60,000/-. The Tribunal has taken the age of the mother of the deceased as 45 years and fixed the income of the deceased at Rs.36,000/- per annum (Rs.3,000/- x 12). From out of Rs.36,000/-, deducted 1/3rd towards personal expenses, applied multiplier '15' and granted Rs.3,60,000/- towards loss of dependency with interest at 9% per annum.

14. As per decision of the Hon'ble Supreme Court in **Sarla Varma V Delhi Transport Corporation**[1], 50% of the amount to be deducted towards personal expenses from the annual income, which works out to Rs.1500/- per month and Rs.18,000/- per annum. In view of the decision in **RESHMAKUMARI AND OTHERS v MADAN MOHAN AND ANOTHER**[2], the age of the deceased has to be taken into consideration for applying the multiplier.

Since the deceased was 21 years old, the appropriate multiplier is ‘18’. Therefore, compensation works out to Rs.3,24,000/- (Rs.18,000/- x 18). Therefore, the loss of dependency granted by the Tribunal is hereby reduced from Rs.3,60,000/- to Rs.3,24,000/-. The petitioners no doubt claimed Rs.3,00,000/- but since the petitioners are entitled to Rs.3,24,000/- which is just and reasonable compensation though, it exceeds the claim they cannot be deprived of the excess amount as per the decisions of the Apex Court in **National Insurance Company Limited v. P.Sujatha and others**[3].

15. So far as interest is concerned, the Tribunal granted 9% per annum without assigning any reasons. In view of the decision of the Hon’ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[4] the rate of interest is reduced from 9% per annum to 7.5% per annum.

16. Accordingly, the Appeal is allowed-in-part modifying the award and decree by reducing the compensation and rate of interest as indicated above. There shall be no order as to costs.

17. As a sequel, Miscellaneous Applications, if any, pending stand disposed of.

A. SHANKAR NARAYANA, J

February, 13, 2015.

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HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

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DATE: 13.02.2015

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[1] (2009) 6 SCC 121

[2] (2013) 9 SCC 65

[3] (2005)4 ALT 264

[4] 2013 ACJ 1403 = 2013(4) ALT 35