HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1041 of 2005

<u>JUDGMENT:</u>

The second respondent, National Insurance Company Limited, in M.V.O.P.No.1149 of 2000 is the appellant. Aggrieved by the order dated 14.12.2004 passed by the Chairman, Motor Accidents Claims Tribunal –cum- III Additional District Judge, Guntur, , whereby and whereunder a sum of Rs.1,67,000/- was awarded as compensation with interest at 9% thereon, though, the petitioners sought a sum of Rs.2.00 lakhs, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), requesting to set aside the order and decree on the ground that the driver of the offending lorry did not possess valid driving licence and that the amount awarded as compensation was excessive and arbitrary, the instant appeal is preferred by the appellant.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

Facts, in brief, are that, on 29.09.2000 at about 6.30 a.m, while one Vasimalla Ravi Kanth @ Ravi Kumar, who was the son of petitioner Nos.1 and 2 and brother of petitioner No.3, was proceeding to Guntur from his house to attend play ground maintenance duty on his cycle and when reached Chuttugunta center on GNT road, a lorry bearing registration No.TN 07 6284, driven at a high speed in a rash and negligent manner, dashed him from behind due to which he sustained fractures and injuries all over his person and succumbed to injuries while undergoing treatment in Government General Hospital, Guntur on 01.10.2000. The concerned police also registered a crime against the driver of the lorry under Section 304-A IPC. The petitioners contending that the deceased was working as an electrician, used to earn Rs.3,000/- p.m, and also used to receive Rs.800/- towards maintenance of Volley Ball Court from 6.00 a.m. to 9.30 a.m, and was aged 19 years old on the date of accident, sought the aforesaid compensation.

The first respondent, owner of the lorry, remained ex parte

The second respondent opposed the claim and he has taken a specific plea in the written statement that the driver of the lorry did not possess valid, proper and effective driving licence at the time of accident.

Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the first petitioner examined himself as PW.1 and Sri Mendam Adam, an eye-witness to the accident, as PW.2, and marked Exs.A.1 to A.4. On behalf of the second respondent, no witnesses were examined, and no documents were filed.

The Tribunal, on appraisal of the evidence, held issue No.1 in favour of the petitioners and, on issue No.2, since no evidence, legally acceptable, was forthcoming, taken the annual earnings at Rs.15,000/-, based on notional income provided in the second Schedule to Section 163A of the Act, deducted 1/3rd therefrom towards his personal expenses, and the remainder of Rs.10,000/- was taken as contribution to the family and, taking the age of the deceased as 19 years, applied multiplier '16', and determined contribution at Rs.1,60,000/- besides granting Rs.3,000/- towards medical expenses and Rs.4,000/- towards funeral expenses and, thus, making a total sum of Rs.1,67,000/- with interest at 9% p.a. and, accordingly, passed an order and decree which is under challenge in the instant appeal.

In the grounds of appeal, the appellant – Insurance Company contends that the Tribunal somehow overlooked the fact that the driver of the offending lorry was not possessing valid driving licence despite the said aspect was argued by the appellant and that the Tribunal ought to have applied multiplier '12.79', and not '16', basing upon the age of his mother and, therefore, sought to set aside the order and decree.

Heard Sri N.Mohan Krishna, learned counsel for the appellant – Insurance Company. No representation on behalf of respondent Nos.1 to 3. The appeal was dismissed against respondent No.4, in fact, respondent No.4, being the first respondent, owner of the vehicle before the Tribunal, suffered a decree.

Perused the order and the material on record. When the Insurance Company pleads violation of conditions of policy contending that the driver of the lorry did not possess valid and effective driving licence on the date of accident, it was obligated with the duty to discharge the burden resting on it. In that direction, the Insurance Company has not chosen to examine any witness, more particularly, the official from the Road Transport Authority to substantiate its stand that the driver of the offending lorry did not possess valid and effective driving licence. In that view of the matter, there is no merit in the instant appeal in so far as that ground is concerned.

Turning to the determination of compensation, it is no doubt true that the Tribunal has taken the age of the deceased to apply the relevant multiplier and, in fact, applied multiplier ‘16’, but not the age of the mother of the deceased to take into consideration the relevant multiplier. But, however, in view of the decision of the Hon’ble Supreme Court in Amrit Bhanu Shali v. National Insurance Company where the deceased dies in unmarried status is an earning member, the age of the deceased would be the criteria for determining the multiplier provided in Sarla Verma v. Delhi Transport Corporation. In the instant case, though multiplier ‘16’ was taken, the relevant multiplier would be ‘18’ and 50% of annual income has to be deducted towards personal expenses since he died in unmarried status. Thus, it would be Rs.1,35,000/-, but, in view of Puttamma v. K.L.Narayana Reddy, where a non-earning member dies, an amount of Rs.1,50,000/- has to be determined as compensation till the second schedule is amended. When, kept in view, that the Tribunal has not awarded any amount towards loss of love and affection and, certainly, the amount of Rs.1,67,000/- determined by the Tribunal as compensation cannot be construed as excessive and arbitrary. Therefore, even there is no merit in the other ground. However, concerning interest, the Tribunal has granted interest at 9% p.a., and the same is reduced to 7.5% p.a. as per the decision of the Hon’ble Supreme Court in Rajesh v. Rajbir Singh.

Thus, the Appeal is allowed in part to the extent of reducing interest from 9% p.a. to 7.5% p.a. but, in all other respects, the order and decree passed by the Tribunal is maintained. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 16.04.2015

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