HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.539 OF 2004, C.R.P.No.5717 of 2004,

M.A.C.M.A.No.443 OF 2009

&

M.A.C.M.A. No.444 OF 2009

Dated 13-2-2015

C.M.A.No.539 OF 2004.

Between:

Dasari Ananda Vijayalakshmi and others.

...Appellants.

And:

Dasari Sugunamma and others.

…Respondents.

C.R.P.No.5717 of 2004.

Between:

New India Assurance Co. Ltd., Divisional Office, Liberty, Hyderabad represented by its Manger, Hyderabad.

...Petitioner.

And:

Korrapati Asha Jyothi and another.

…Respondents.

M.A.C.M.A.No.443 OF 2009

Between:

New India Assurance Co. Ltd., Divisional Office, Liberty, Hyderabad represented by its Manger, Hyderabad.

...Petitioner.

And:

Dasari Sugunamma and others.

…Respondents.

M.A.C.M.A.No.444 OF 2009

Between:

New India Assurance Co. Ltd., Divisional Office, Liberty, Hyderabad represented by its Manger, Hyderabad.

...Petitioner.

And:

Padarthi Suvarna Kumari and others.

…Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A. No.539 OF 2004,C.R.P.No.5717 of 2004,

M.A.C.M.A.No.443 OF 2009

&

M.A.C.M.A. No.444 OF 2009

COMMON JUDGMENT:

These appeals and revision arise out of common judgment dated 16-6-2003 in M.V.O.P.Nos.1161 of 1998, 1186 of 2002, 225 of 2000 and 1086 of 1999.

Insurance company preferred revision and appeals challenging compensation granted to the claimants and one of the claimants preferred appeal not satisfied with the quantum granted by the tribunal.

Brief facts leading to filing of these appeals and revision are as follows:

On the night of 27-9-1998, deceased Dasari Prabhakara Rao, Korapati Asha Jyothi and some others while going from Hyderabad to Vijayawada in an Ambassador Car which was driven by one Sameul Sampath Kumar, met with an accident in the limits of Munagala Police Station where a passenger bus bearing No.A.P-9U- 9000 came in opposite direction and dashed the said Ambassador car, as a result, Prabhakara Rao suffered grievous injuries and died on the spot while the car driver succumbed to injuries in the hospital and remaining inmates of the car sustained injuries.

It is the contention of the claimant that the accident was due to rash and negligent driving of the bus driver bearing No.A.P-9U- 9000.

This claim is resisted by the Insurance company of the bus and the Tribunal on a consideration of oral and documentary evidence, granted compensation of Rs.2,78,000/- to the claimant in O.P.No.1186 of 2002, granted a sum of Rs.2,88,000/- to the claimant in O.P.No.225 of 2000 and ordered apportionment of compensation equally among all the claimants and a sum of Rs.9,532/- was granted to the claimant in 1086 of 1999. Aggrieved by the order of the Tribunal, Insurance Company in O.P.Nos.1086 of 1999, 1186 of 2002 and 225 of 2000 preferred C.R.P.Nos.5717 of 2004, M.A.C.M.A.Nos.443 of 2009 and 444 of 2009 respectively, and claimants in O.P.No.1186 of 2002 preferred C.M.A.No.539 of 2004 for disallowing a sum of Rs.22,000/-.

Heard both sides.

Advocate for Insurance Company mainly contended that Tribunal failed to consider that the policy premium paid by cheque marked as Ex.B.2 was dishonoured and on account of that, policy was cancelled and the same was intimated to the owner of the bus, but in spite of that, the tribunal awarded compensation and fixed the liability on the Insurance Company of the crime bus. He further submitted that when the policy is cancelled, there is no contract between the insurer and the insured to make insurance company liable to pay any compensation and thereby, the tribunal erred in fastening liability on the Insurance Company.

On the other hand, advocate for claimant contended that there is no evidence before the tribunal to show that policy was cancelled following the dishonour of the cheque and considering the same, objection of the Insurance Company which was also raised before the trial court is negatived. He further submitted that the tribunal granted a meagre sum of Rs.10,000/- towards consortium . He submitted that apportionment ordered by the tribunal is not correct and that the apportionment was equally made to the mother who was aged about 55 years, which is not proper.

Now the point that would arise for my consideration in these appeals and revision is whether the judgment of the tribunal is proper, legal and correct?

POINT:

The first objection of the Insurance Company is that there is no contractual liability as on the date of accident since the cheque issued towards payment of premium was dishonoured and the Insurance Company cancelled the policy following dishonour of the cheque which was duly intimated to the owner of the bus and therefore, the Insurance Company is not liable.

As seen from the record, the very same objection is taken before the lower tribunal and the learned Chairman Motor Accidents Claims Tribunal after considering evidence produced on behalf of respondents, particularly, evidence of Branch manager who is examined as R.W.1, observed that there is no supporting document to prove the plea of cancellation of policy.

On behalf of Insurance Company, three documents are exhibited, which are copies of policy, dishonour of cheque and the bank document i.e., memorandum of statement of account. Though it is deposed in the evidence of R.W.1 that policy was cancelled, there is no supporting document to the said statement. The accident was on 27-9-1998, Insurance company got marked a letter contending that it informed the owner about the dishonour of cheque and cancellation of policy. But no document is produced to show that the owner received this letter nor such a letter has been sent to owner, because no postal acknowledgement or no postal receipt is filed to show that such a letter has been sent to owner of the bus.

In the absence of any evidence to show that there is cancellation of policy and the same was duly intimated, the contention of the appellant cannot be accepted. Admittedly, the appellant is an institution and it must have records if really any such cancellation is ordered. No such records are produced. The lower tribunal considering these aspects disbelieved the contention of appellant. Further, in the written statement, the Insurance Company has not pleaded about this Ex.B.6 letter and when no supporting material is placed to show such a letter was addressed to owner and there was due intimation to owner about alleged cancellation, these aspects are rightly negatived by the tribunal and discarded the plea of Insurance Company.

On a scrutiny of material, I do not find any wrong appreciation of evidence or incorrect findings in the award of the Motor Accidents Claims Tribunal. The burden is heavy on the Insurance Company when it contended that there is no contractual liability as on the date of accident.

Having failed in discharging its burden, it is not open to the Insurance Company to now contend that the tribunal failed to consider that there is no contractual liability between the insurer and the insured. The lower tribunal has elaborately discussed evidence both oral and documentary and came to a right conclusion in fixing liability on Insurance Company and I do not find any grounds to interfere with the findings of the lower tribunal.

With regard to contention of one of the claimant that tribunal has erred in not considering the consortium at Rs.15,000/-, I am of the view that the said contention is not correct, particularly, when the evidence is properly considered and the compensation is fixed on the basis of age and multiplier. The accident was in the year 1998, consortium of Rs.10,000/- in those days in my view is perfectly right and therefore, the objection of claimant in

O.P.No.1186 of 2002 is not tenable.

As seen from the record, the claim of claimant in O.P.No.1186 of 2002 was Rs.3,00,000/- and tribunal awarded Rs.2,78,000/- and only meagre amount of Rs.22,000/- is disallowed. Lower court on appreciation of evidence correctly fixed compensation and I find no grounds to interfere.

On a scrutiny of the evidence, I am of the view that there are absolutely no grounds to interfere with the findings of lower court, both on facts and law.

For these reasons, all the appeals and C.R.P. are devoid of merits and liable to be dismissed.

Accordingly, all the appeals and C.R.P. i.e., C.M.A.No.539 of 2004, M.A.C.M.A.No.443 OF 2009 and M.A.C.M.A. No.444 OF 2009 and C.R.P.No.5717 of 2004 are dismissed. No costs.

As a sequel to the disposal of these appeals and revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 13-2-2015.
Dvs

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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C.M.A. No.539 OF 2004,C.R.P.No.5717 of 2004,
M.A.C.M.A.No.443 OF 2009
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Dvs