HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1080 of 2005

J U D G M E N T:

This appeal is filed by the appellant/third respondent insurance company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 01.10.2004 passed by the Additional District Judge-cum-Chairman, Motor Vehicle Accidents Claims Tribunal, Vizianagaram, in O.P.No.403 of 2003, awarding compensation of Rs.3,55,008/-.

2. The respondents 1 to 7 herein are the widow wife, children and parents of one Gurrapu Ramarao (hereinafter referred to as 'the deceased'). They filed the above O.P under Section 166 of the Act claiming compensation of Rs.5,75,000/- on account of the death of the deceased in a motor vehicle accident that occurred on 07.01.2003.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 07.01.2003 at about 8.30 p.m., the deceased was walking on the road from Vizianagaram to Dharmapuri village and when he reached the Prasadula's land, the driver of the auto bearing No.AP 35 T 4730 drove the vehicle in a rash and negligent manner in high speed and dashed the deceased. Due to which the deceased fell down and sustained injuries all over his body. Immediately he was shifted to Ramarao Hospital, Vizianagaram and after rendering first aid, he was shifted to Abhaya Critical Care, Visakhapatnam. While undergoing treatment, he died on 08.01.2003. The petitioners stated that the respondents being the owner and insurer jointly liable to pay the compensation.

5. Originally the petitioners filed the petition against respondent Nos.1 to 3 only. Later, as per the orders passed in I.A.No.1716 of 2004 dated 13.07.2004, respondent No.4 was added and during the course of trial, respondents 1, 2 and 4 remained

ex parte.

6. The brief averments made in the counter filed by the third respondent are as follows:

The third respondent put the petitioners to prove the manner of accident, age and income of the deceased and also specifically denied that the driver of the auto drove the vehicle in a rash and negligent manner and he is having valid driving licence and the vehicle is insured with the third respondent and finally contended that the claim of the petitioners is high and excessive and prayed the Court to dismiss the petition.

7. The third respondent also filed additional counter claiming that the petition filed by the petitioners is bad for non-joinder and mis-joinder of parties and the second respondent gave the vehicle on lease to fourth respondent and in view of the above transaction, the insurance company is not liable to pay compensation to the petitioner and there is no privity of contract in between the fourth respondent and the third respondent. The respondent also stated that the fitness certificate of the crime vehicle was expired on 26.12.2002 and the alleged accident occurred on 07.01.2003, therefore, prayed the Court to dismiss the petition.

8. Basing on the above pleadings, the Tribunal framed three issues and one additional issue and to substantiate the claim, the petitioners got examined PWs.1 to 3 and got marked Exs.A1 to A8 on their behalf. On behalf of the contesting respondent, RW.1 got examined and Ex.B1 got marked.

9. The Tribunal after considering the oral and documentary evidence on record held that the accident occurred due to rash and negligent driving of the driver of the auto for which the deceased Gurrapu Rama Rao died and awarded compensation of Rs.3,55,008/- along with interest at 9% p.a. Aggrieved by the order passed by the Tribunal, the third respondent-insurance company preferred the present appeal.

10. Learned counsel appearing for the appellant argued that the petitioners failed to prove that the driver of the crime vehicle(auto) was having valid driving license and further argued that the vehicle is not fit to ply on road as the fitness certificate of the vehicle was expired prior to the accident and finally argued that the compensation claimed by the petitioners is high and excessive and

prayed the Court to allow the appeal. Learned counsel for the appellant also argued to reduce the rate of interest from 9% p.a. to 7.5% p.a.

11. On the other hand, learned counsel for the respondents, who filed cross-objections, argued that the Tribunal without considering the evidence on record granted meager compensation, further the Tribunal in view of the judgment of ***SARLA VERMA v. DELHI TRANSPORT CORPORATION*** case, when the claimants are more than '6', 1/5th of the income has to be deducted towards personal expenses of the deceased and further contended that the Tribunal awarded meager amount of compensation for the heads of funeral expenses, consortium etc., and prayed the Court to enhance the compensation.

12. A perusal of evidence of P.W.1 shows that her husband was working as Lab Assistant in Agricultural Department, Vizianagaram and he used to get net salary of Rs.2,884/- and filed Ex.A4 salary certificate. The Tribunal by taking into consideration the net salary of the deceased computed the annual income at Rs.34,608/- In this regard, there should not be any dispute by the petitioners in view of the latest judgment of the Hon'ble Apex Court in Sarla Verma's case (first cited supra) as the petitioners are more than six in number, as such, 1/5th has to be deducted towards personal expenses, which comes to Rs.28,487/-, by applying relevant multiplier, i.e. '14', the petitioners are entitled to an amount of Rs.3,98,818/- towards loss of dependency due to the death of the deceased.

13. Learned counsel for the petitioners (cross-objectors) contended that the Tribunal awarded meager amount of compensation towards consortium, loss of estate and funeral expenses. In a decision of the larger Bench of the Hon'ble Supreme Court in ***Ramilaben Chinubhai Parmar and others v. National Insurance Co. Ltd., & others.,*** the Supreme Court awarded Rs.50,000/- as conventional amount to the dependants. Therefore, in view of the said judgment of the Hon'ble Apex Court, I am of the view that the petitioners/cross-objectors are entitled for Rs.50,000/- towards conventional amount in addition to the amount already awarded by the Tribunal. Thus, the petitioners are entitled for total amount of Rs.4,48,818/- towards compensation together with interest at 7.5% p.a. on the enhanced amount of compensation.

14. Learned counsel for the appellant contended that at the time of accident, the vehicle was not in fit condition to ply on roads as the fitness certificate of the vehicle was expired on 26.12.2002, whereas, the accident occurred on 07.01.2003. To support his contention, the appellant has not produced any evidence, i.e. technical evidence to show that the vehicle was not roadworthy. The evidence of R.W.1, who is working as Administrative Officer in United Insurance Company is not relevant to prove the said fact. Admittedly, the accident vehicle was insured with the third respondent-appellant on the date of accident and the policy was in force. Petitioners are the third parties, therefore, in view of Ex.B1 policy the appellant insurance company is liable to pay compensation as the appellant failed to prove that the vehicle was not roadworthy at the time of accident. The Tribunal after considering all these aspects, rightly awarded the compensation to the respondents/cross objectors and the appellant has not made out any case to allow the appeal.

15. Hence, the M.A.C.M.A. filed by the appellant-insurance company is dismissed and the cross-objections filed by the petitioners-claimants is allowed enhancing the compensation from Rs.3,55,008/- to Rs.4,48,818/- along with interest at 7.5% on the enhanced amount of compensation from the date of appeal till the date of realisation. No order as to costs.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 30.10.2015

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