HON'BLE MRS JUSTICE ANIS

CMA No. 2905 of 2004

JUDGMENT:

This CMA is filed by the United India Insurance Company Limited, against the judgment and decree, dated 18.06.2003, passed in OP No.501 of 1997 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad.

2. The parties are hereinafter referred to as they were arrayed before the Tribunal for the sake of convenience.

3. The petitioners filed OP No. 501 of 1997, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- for the death of Pradeep Kumar in the motor vehicle accident. The brief averments made in the petition are as follows. The petitioners are the parents and sister of the deceased Pradeep Kumar, who is an engineering student, studying III year at MGM College, Nanded, and he was a resident of Hussainnagar, Sirikonda Mandal, Nizamabad District. On the night of 27.03.1997, at about 11.30 PM, the deceased was traveling on a motor cycle bearing registration No.AP 10/4084 as a pillion rider and the vehicle was driven by one Dharam Kiran from Nanded to Nizamabad. When they reached near Yedpally village bridge on Bodhan to Nizamabad road, the driver of the motor cycle drove the same in a rash and negligent manner at high speed and dashed the unknown vehicle, due to which the deceased Pradeep Kumar received head injury and other multiple fractures and died on the spot. It

is stated that the deceased was a brilliant and good sportsman and he would have become ‘A’ class officer and would have earned at least Rs.15,000/- per month and the deceased was the only son to the petitioners 1 and 2 and due to untimely death of the deceased, the petitioners put to hardship and loss of dependency. The respondents 1 and 2 being the owner and insurer of the motor cycle are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent-owner of the motor cycle remained *ex parte*.

5. The second respondent-Insurance Company filed counter affidavit contending that the petitioners have to prove the manner of accident, age and educational qualifications of the deceased. It is further contended that in the FIR it was mentioned that some unknown vehicle hit the motor cycle and the alleged accident occurred due to rash and negligent driving of the unknown vehicle but in the FIR there is no mention of registration number of any motor cycle and thy denied the involvement of the motor cycle belonging to the first respondent. It is further contended that the future earnings of the deceased as mentioned in the claim petition are only imaginary and it cannot be relied upon and on verification it is found that the scooter belonging to the first respondent was insured with them and the policy was valued from 30.07.1996 to 29.07.1997 and no premium is paid to cover the risk of pillion rider and the pillion rider is not a third party and that the quantum of compensation claimed by the petitioners is excessive and exorbitant and prayed the Court to dismiss the

petition.

6. Basing on the above pleadings, the Tribunal framed the following issues.

> "1. Whether the accident was occurred due to rash and negligent driving of the vehicle bearing No.AP 10-4084 by its driver?
>
> 2. Whether the petitioners are entitled for compensation? If so, to what just amount and from whom?
>
> 3. To what relief?"

7. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the second respondent-Insurance Company, RW.1 was examined and Exs.B1 and B2 were marked.

8. After considering the oral and documentary evidence produced by both the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the driver of the motor cycle bearing No.AP-10/4084 on which the deceased was traveling as a pillion rider. The Tribunal also held that Ex.B1 is a comprehensive policy and it covered the pillion rider also and granted compensation of Rs.5,00,000/- with interest at 9% p.a. Aggrieved by the said award, the second respondent-Insurance Company preferred the present appeal.

9. Learned counsel for the second respondent-Insurance Company argued that the Tribunal, without any proper evidence, has granted the compensation as prayed for by the petitioners and the relevant multiplier as per **Sarla Verma v. Delhi Transport Corporation**[1]**,** is only '14', but strangely the

Tribunal applied the multiplier ‘15’. It is further argued that the deceased is a student and there is no evidence put forth by the petitioners to say that he would have earned at least Rs.150/- per day and prayed the Court to reduce the compensation awarded by the Tribunal.

10. On the other hand, learned counsel for the petitioners-claimants argued that the Tribunal, after considering the entire oral and documentary evidence on record, granted a reasonable compensation and the said finding needs no interference. It is further argued that even if the mother’s income is taken into consideration the petitioners are entitled for the compensation as prayed for and finally prayed the Court to dismiss the appeal.

11. The point that arises for consideration is whether the compensation awarded by the Tribunal is just and reasonable?

12. A perusal of the record shows that there is no dispute that the deceased was the son of petitioners 1 and 2 and brother of petitioner No.3 and he was studying engineering III year in MGM College, Nanded. There is no dispute that on 27.03.1997 at about 11.30 PM the deceased was traveling on a motor cycle bearing registration No.AP 10/4084 as a pillion rider and the vehicle was driven by one Dharam Kiran from Nanded to Nizamabad and when they reached near Yedpally village bridge on Bodhan to Nizamabad road, some unknown vehicle hit the motor cycle, due to which the deceased Pradeep Kumar received head injury and other multiple fractures and died on the spot. The Tribunal, after considering the evidence of PWs.1

and 2, has rightly held that the accident was caused due to rash and negligent driving of the driver of the motor cycle on which the deceased was traveling as a pillion rider. The Tribunal also held that Ex.B1 is a comprehensive policy and it covers the pillion rider.

13. The only grievance of the appellant-Insurance Company is that the Tribunal has not applied the relevant multiplier. As per **Sarla Verma's** case (1 supra) the relevant multiplier for the age group of the mother of the deceased i.e., 44 years is '14'. Further the learned counsel for the appellant-Insurance Company has contended that the Tribunal, without any evidence, has fixed the income at Rs.3,000/- per month. In this regard, even if the income of the mother of the deceased is taken into consideration, Rs.3,000/- per month is reasonable amount, therefore, the Tribunal has rightly fixed the loss of dependency which comes to Rs.36,000/- per annum. If the same is multiplied with the appropriate multiplier '14', the loss of dependency would come to Rs.5,04,000/- for which the petitioners are entitled to. Since the Tribunal, after considering the evidence on record, has rightly granted the compensation of Rs.5,00,000/-, which is just and reasonable, the said finding needs no interference. The appeal is devoid of merit and the same is liable to be dismissed.

14. Accordingly, the CMA is dismissed. There shall be no order as to costs.

15. As a sequel thereto, the miscellaneous applications, if any, pending in this CMA shall stand closed.

ANIS, J

Date: 22.06.2015.
Nsr

[1] (2009) 6 SCC 121