HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 3090 of 2005

Judgment:

The instant appeal is preferred by the second respondent – United India Insurance Company Limited challenging the order, dated 27.07.2005, in OP No.676 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad, whereby and whereunder a sum of Rs.3,01,800/- was granted as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') on the ground that the deceased was an unauthorized passenger travelling in DCM Van and the Tribunal ought to have taken notional income at Rs.15,000/- per annum as no income proof was forthcoming from the side of the petitioners.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 20.12.2002, the husband of the first petitioner namely, V. Laskar boarded a DCM Van bearing registration No.AP-16W-3639 to go to Vijayawada and when the said Van reached Kothavarigudem at about 1.30 AM early hours, a lorry bearing registration No.AP-26U-7711, driven by its driver in a rash and negligent manner at high speed, hit the DCM Van, due to which the said V. Laskar and others received injuries and while he was being shifted to Headquarters Hospital, Nalgonda, he succumbed to injuries. A crime was also registered by the Station House Officer, Garidepally Police Station, under Section 304-A IPC against the lorry driver. The petitioners, claiming that the deceased was earning Rs.6,000/- per month and was aged 30 years on the date of accident, sought a sum of Rs.3,50,000/- against the respondents 1 and 2 who are owner and insurer of the vehicle respectively.

4. The first respondent – owner of the vehicle remained *ex parte*. The second respondent – Insurance Company opposed the claim by raising various pleas.

5. The Tribunal, based on the said pleadings, framed three issues in order to fix the responsibility for the accident.

6. During enquiry, the first petitioner besides examining herself as PW.1 also examined one Vadtha Sevya the eye witness as PW.2 and marked Exs.A1 to A6. On behalf of the second respondent – Insurance Company, no witnesses were examined, but copy of insurance policy was marked as Ex.B1 on consent.

7. The Tribunal, on appraisal of evidence let in by the petitioners, held issue No.1 in favour of the petitioners. On issue No.2, taking the age of the deceased as 32 years and daily earnings at Rs.70/-, deducted 1/3rd towards personal expenses and contribution to the family at Rs.16,800/-. By applying the multiplier '16' arrived at Rs.2,68,800/- towards loss of dependency. This apart, the Tribunal has granted Rs.15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transport charges and, thus, granted a total sum of Rs.3,01,800/- by apportioning the said amount amongst the petitioners who are numbering five.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the deceased was travelling as unauthorized passenger in a goods vehicle and the Tribunal ought not to have taken Rs.70/- per day as income and ought to have taken Rs.15,000/- notional income provided by the statute and, thereby, sought to set aside the award and decree passed against it.

9. No representation for the appellant – Insurance Company.

Heard Sri K. Jagadishwar Reddy, learned counsel for the respondents 1 to 5. The instant appeal was dismissed against respondent No.6, who is the owner of the vehicle, by the order dated 06.01.2012. Since he remained *ex parte* before the Tribunal, the dismissal of the instant CMA against him is of no consequence in deciding the controversy herein, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**[1].

10. Though it is contended in the grounds that the deceased was a gratuitous passenger travelling in a goods vehicle that being DCM Van, but the claim was laid against the owner and insurer of the opposite vehicle which was the Lorry and even the FIR was registered against the Lorry driver. Therefore, so far as the Lorry is concerned, the deceased is a third party to the insurer of the lorry. Therefore, that ground as raised in the grounds of appeal by the Insurance Company is of no avail to accede to its request.

11. Concerning the income fixed at Rs.70/- per day by the Tribunal, certainly, it does not suffer from any infirmity as the same is well reasoned and well appreciated warranting no interference. As seen from the order under challenge, the dependants are five in number. In fact, deduction of 1/4th, but not 1/3rd, towards personal expenses is permissible in view of the decision in **Sarla Verma v. Delhi Transport Corporation**[2]. Thus, viewed from any angle the compensation of Rs.3,01,800/- awarded by the Tribunal is just and adequate warranting no interference at all. The appellant – Insurance Company has not challenged the rate of interest granted by the Tribunal. Therefore, the award of the Tribunal is confirmed in all respects.

12. Accordingly, the instant MACMA is dismissed. There shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 28.12.2015
Nsr

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[1] 2001(1) ALD 453 (DB)

[2] (2009) 6 SCC 121