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<�W#0‡#dÁ'V¤Á'dd&Á'Š@,LÎ6d,0v,,,,#,#új,,,‡#¦¦¦¦„ ˜ä˜ÿÿÿÿTHE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI C.M.A.No.3396 of 2004 JUDGMENT: This appeal by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for short) is directed against the award dated 09.04.2004 in MVOP.No.226 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur. 2. I have heard the submissions of the learned counsel for the appellant/Insurance company ('the insurance company', for brevity) and the learned counsel for the claimants/respondents 1 to 3 ('the claimants', for brevity). I have perused the material record. The 4th respondent is the owner –cum-insured of the lorry involved in the accident. This appeal against him was dismissed for default. 3. Before proceeding further, it is necessary to note that it is represented that the 4th respondent is the owner-cum-insured and that he had remained ex parte before the Tribunal and that therefore, he is not a necessary and proper party to this appeal. This appeal against the 4th respondent herein/the owner-cum-insured was dismissed for default. Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others. 4. (a) The case of the claimants may be stated, in brief, as follows: 'On 11.08.1999 at about 4 PM, while the deceased Maddineni Dilip and others were proceeding on a Yamaha motor bike bearing registration No. AP 16 H 5161 from Sai Krishna Maruthi Garriage, Labbipet to Koneru Lakshmaiah Engineering College to meet their friends and, on the way, when they had reached NH 5 bypass road, after crossing a toll gate, a lorry bearing registration No. AP 37 U 88 being driven by its driver at a high speed and in a rash and negligent manner came from the opposite direction and had dashed against the said Yamaha motor bike. As a result, the deceased-Maddineni Dilip and Soma Sekhar died on the spot and the other rider had sustained injuries. At the time of the accident, the deceased was of 21 years of age and was hale and healthy and was working as Managing Supervisor in Green Land Trade Links and Green Land Transport and used to draw a salary of Rs.4,500/- per month. He was contributing his entire earnings for the maintenance of the family consisting of the 1st claimant-mother aged 42 years, the 2nd claimant-sister aged 14 years and the 3rd claimant-grandmother aged 65 years. All the claimants had depended upon the earnings of the deceased, who was the sole earning member. On his death they had suffered great pain and mental agony. Hence, the claim petition was filed claiming a compensation of Rs.5,00,000/- against the respondents 1 and 2 viz., the owner-cum-insured and the insurer of the said lorry. The said respondents are jointly and severally liable to pay the compensation to the claimants.' 4. (b) Before the Tribunal, the 1st respondent owner-cum-insured had remained ex parte; and, the 2nd respondent/insurance company had resisted the claim by raising various contentions. 4. (c) At trial, the 1st claimant was examined as PW1 and exhibits A1 to A6 were marked on the side of the claimants. No oral and documentary evidence was adduced on the side of the insurance company. 4. (d) On merits, the Tribunal, while holding that the pleaded accident resulting in the death of the deceased-Maddineni Dilip had occurred due to the rash and negligent driving of the driver of the lorry bearing No. AP 37 U 88, had awarded a compensation of Rs.5,00,000/- to the claimants and had further directed the respondents 1 and 2 to pay the said compensation amount to the claimants with interest at 9% per annum from the date of the petition till the date of payment or realisation besides proportionate costs. A time of 30 days from the date of the order was granted for depositing the said compensation. 4. (e) Challenging the said award, the insurance company had preferred this appeal. It is stated that no appeal or cross objections are filed by the claimants. 4. (f) I shall first advert to the contentions of both the sides to underscore the scope and ambit of the contentions in this appeal and then precisely deal with the relevant issues involved in the appeal. 5. The insurance company had filed the appeal raising broadly three issues, namely, one issue concerning the negligence/contributory negligence of the drivers of the vehicles involved in the accident and the other two issues concerning the excess award of compensation and the liability of the Insurance Company to pay the compensation. 6. The learned counsel for the appellant-insurance company would contend as follows: 'The Tribunal ought to have seen that there is no evidence to show the rashness and negligence on the part of the driver of the lorry. The Tribunal had erred in allowing the claim application and in fastening the liability on the insurance company. The Tribunal ought to have seen that there is contributory negligence on the part of the driver of the other vehicle (motor bike) involved in the accident and that at the time of the accident, three persons were travelling on the said two wheeler and that the said vehicle was also driven in a rash and negligent manner at the time of the accident. The Tribunal erred in adopting the multiplier '17'. The deceased was unmarried, and therefore, the age of the mother of the deceased alone ought to have been taken into consideration but, not the age of the deceased for adopting the appropriate multiplier. The Court below had erred in relying upon the salary certificate-exhibit A6 though the contents of the same were not proved in accordance with law. The Tribunal ought not to have relied upon the interested testimonies of the witnesses and ought to have properly appreciated the evidence. The Tribunal ought to have seen that the driver, who drove the crime vehicle was not having valid and effective driving licence at the time of the accident and that he was not authorised to drive the said vehicle in question and that, therefore, there is violation of the provisions of law as well as the terms and conditions of the policy and hence, the Tribunal ought not to have saddled the insurance company with the liability. 7. Per contra, the learned counsel for the claimants while supporting the orders of the Tribunal had submitted that the insurance company did not adduce any evidence and that the Tribunal had accurately considered the facts pleaded and properly appreciated the oral and documentary evidence adduced on behalf of the claimants and had rightly determined all the issues and had awarded reasonable compensation and that the contentions now urged before this court by the insurance company are all devoid of merit and that the appeal is liable to be dismissed being devoid of merit. 8. Accordingly, it is necessary to only deal with the following principal issues which fall for determination in this appeal. 1) Whether the pleaded accident resulting in the death of the deceased-Maddineni Dilip had occurred due to the rash and negligent driving of the lorry bearing registration No.AP 37 U 88 by its driver? Or in the alternative, Whether the accident had occurred due to the contributory negligence of the driver of the said lorry and also the driver of the two-wheeler involved in the accident as contended by the insurance company? 2) Whether the compensation awarded by the Tribunal is excessive as contended by the insurance company? And if so, what shall be the just and fair compensation to be determined and awarded to the claimants? 3) Whether the insurance company is not liable to pay the compensation? 9. POINT No.1: The claimants are the mother, the minor sister and the aged grandmother of the deceased-M.Dilip. The manner of accident as per the averments in the claim petition is as follows: 'On 11.08.1999 at about 4 PM, while the deceased Maddineni Dilip and others were proceeding on a Yamaha motor bike bearing registration No. AP 16 H 5161 from Sai Krishna Maruthi Garriage, Labbipet to Koneru Lakshmaiah Engineering College to meet their friends and, on the way, when they had reached NH 5 bypass road, after crossing a toll gate, a lorry bearing registration No. AP 37 U 88 being driven by its driver at a high speed and in a rash and negligent manner came from the opposite direction and had dashed against the said Yamaha motor bike. As a result, the deceased and the said Somaskekhar had died on the spot having succumbed to the injuries sustained in the accident. Venkata Krishna Rao, the injured, was shifted to University General Hospital, Vijayawada. On a report, a case in Crime No.212 of 1999 was registered against the driver of the said lorry under Section 304-A and 337 of the Indian Penal Code. The accident had taken place only due to the rash and negligent driving of the driver of the said lorry.' On the other hand, the defence of the insurance company in its written statement is in the nature of general denial. It is specifically contended in the written statement that the contention of the claimants that the accident had taken place only due to the rash and negligent driving of the driver of the lorry is false and that there is no rashness or negligence on the part of the driver of the lorry. Thus, the manner of accident pleaded by the claimants was not specifically denied and the version of the insurance company in regard to the manner of the accident is not pleaded in its written statement. At trial, the mother of the deceased was examined as PW1. In her evidence, exhibit A1-the certified copy of FIR, exhibit A2-the certified copy of charge sheet, exhibit A3-the certified copy of the inquest report, exhibit A4-the certified copy of P.M Report of the deceased, exhibit A5-the certified copy of MVI's report and exhibit A6- the salary certificate of the deceased were exhibited. Though she is not an eyewitness to the accident, she had affirmed in her evidence, the pleaded case of the claimants. The above documents, exhibits A1 to A5, on a perusal would show that the pleaded accident had occurred in the manner stated in the claim petition and that the police investigation had also revealed that the driver of the lorry was alone responsible for the accident and hence, the police had charge sheeted him. The insurance company did not adduce any evidence

in rebuttal. Therefore, in the facts and circumstances of the case, the Tribunal had held that the pleaded accident resulting in the death of the deceased-Dilip had occurred due to the rash and negligent driving of the lorry bearing Registration No.AP37U88, by its driver. In view of the overwhelming documentary evidence, which supports the case of the claimants, and in the absence of specific denial of the manner of accident pleaded by the claimants and also any rebuttal evidence on the side of the insurance company, this Court is inclined to uphold the findings of the Tribunal as there is no reason calling for interference with the well considered finding of the Tribunal. As held in Bimla Devi and Others v. Himachal Road Transport Corporation and Others [2009 (6) SCJ 368], 'it was necessary to borne in mind that strict proof of an accident caused by a particular bus in a particular manner many not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability'. What is to be noted is that the contributory negligence is not a matter of assumption and there cannot be any inference in regard to contributory negligence contrary to the evidence brought on record, more particularly, in the absence of any evidence adduced by the insurance company. It is pertinent to note that this appeal was dismissed for default against the owner-cum-insured. Even though the appeal was dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of the statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company. Therefore, the Insurance Company is precluded from challenging in this appeal the finding of the Tribunal that the accident had not taken place due to the rash and negligent driving of the driver of the lorry, as the appeal was dismissed for default against the owner-cum-insured. The point is accordingly answered. 10. POINT No.2: 10. (a) The contention of the insurance company is that the compensation awarded by the Tribunal is excessive. As regards the claim and other allied aspects, the case of the claimants is this: 'At the time of the accident, the deceased was of 21 years of age and was hale and healthy and was working as Managing Supervisor in Green Land Trade Links and Green Land Transport and used to draw a salary of Rs.4,500/- per month. He was contributing his entire earnings for the maintenance of the family consisting of the 1st claimant-mother aged 42 years, the 2nd claimant-sister aged 14 years and the 3rd claimant-grandmother aged 65 years. All the claimants had depended upon the earnings of the deceased, who was the sole earning member. On his death they had suffered great pain and mental agony. Hence, the claim petition was filed claiming a compensation of Rs.5,00,000/- against the respondents 1 and 2.' PW1, while reiterating the pleaded case aforementioned had filed exhibit A6-the salary certificate of the deceased, wherein the salary of the deceased was mentioned as Rs.5,000/-. Though neither the employer nor a representative of the employer of the deceased was examined and the contents of exhibit A6 were not proved, the Tribunal had determined the salary of the deceased at Rs.5,000/- per month and then deducted a 1/3rd from out of the said amount towards the personal and living expenses of the deceased. The Tribunal, after applying the multiplier '17', had arrived at the compensation under the head 'loss of dependency' Rs.6,80,000/- and had further awarded Rs.5,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection and had thus, determined the total compensation to which the claimants would be entitled to at Rs.6,97,000/-, but had awarded Rs.5,00,000/- only to the claimants by restricting the award amount to the amount as claimed by them in the claim petition. The learned counsel for the insurance company had contended that the Tribunal ought not to have taken the income of the deceased as mentioned in the salary certificate as the contents of the same are not proved and that the Tribunal erred in fixing the multiplier '17' by taking the age of the deceased, who is a bachelor instead of taking the age of his mother, which is '42' years. Therefore, he had contended that the compensation awarded is excessive and is to be scaled down. 10. (b) As rightly contended by the learned counsel for the appellant insurance company, though exhibit A6, salary certificate showing the monthly income of the deceased at Rs.5,000/- was exhibited, the contents of the same were not proved by examining any competent witness like the employer or a representative of the employer of the deceased. However, the Tribunal had accepted the monthly income of the deceased at Rs.5,000/- per month. Be that as it may. The deceased was an young man of 21 years of age at the time of the accident. The Tribunal did not add any further amount to the actual salary towards future prospects. Therefore, in the facts and circumstances of the case, it is reasonable to accept the monthly income of the deceased at Rs.5,000/- without any further addition towards future prospects. Coming to the multiplier, as per the ratio in the decision in Sarala Verma v. Delhi Transport Corporation and another, the appropriate multiplier is '18' (eighteen). However, the Tribunal had applied the multiplier '17' by taking into consideration the age of the deceased, who is a bachelor and had proceeded to determine the compensation. The contention that the age of the mother has to be taken into consideration for determining the appropriate multiplier cannot be countenanced as a Division Bench of this Court in Oriental Insurance Company v. Kunapareddy Saroja having considered the precedential guidance in various decisions of the Supreme Court had held that the age of the deceased shall alone be considered to apply appropriate multiplier even though the deceased is a bachelor. If the calculation of the compensation is to be made as per the legal position now obtaining, the claimants would be entitled to more compensation than awarded by the Tribunal. However, the claimants, who are satisfied with the said awarded amount have not preferred any appeal or cross appeal. Therefore, this Court finds that the compensation awarded is just and fair and cannot be said to be unreasonable or excessive in the facts and circumstances and the legal position applicable and obtaining as on today. The point is accordingly answered. 11. POINT No.3: Coming to the liability of the insurance company to pay the compensation, it is only contended that the driver of the lorry did not hold valid and effective driving licence to drive the lorry at the time of the accident and the provisions of law and the terms and conditions of the policy are violated and therefore, the insurance company is not liable. However, the insurance company did not adduce any evidence in support of the said contentions. Therefore, there is no evidence, much less credible evidence, to accept the defence pleaded in the written statement. It is not in dispute that the lorry was insured with the insurance company at the relevant time and that the policy in respect of the lorry covers the risk of the deceased, a third party. Therefore, it follows that the insurance company is jointly and severally liable along with the insured-cum-owner of the lorry to pay the compensation to the claimants. The point is accordingly answered. 12. In the result, the appeal is dismissed without costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed. _____________________ M. SEETHARAMA MURTI, J 01st May, 2015 RAR 2001(1) ALD 453 (DB) 2009 ACJ 1298 2014 (5) ALT 99 PAGE PAGE 10 MSRM, J C.M.A.No.3396 of 2004

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