

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1399 OF 2005

JUDGMENT:

Respondent No.2 – United India Insurance Company Limited in M.V.O.P.No.569 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum - II Additional District Judge (Fast Track Court), Medak at Sangareddy, preferred the instant appeal having got aggrieved by the order and decree, dated 15.03.2005, passed in the said O.P., whereby and whereunder, a sum of Rs.3,00,000/- was awarded as compensation with interest at 9% per annum from the date of petition till realisation, on the sole ground that the amount awarded by the Tribunal is exorbitant and excessive.

2. The appellant – Insurance Company is respondent No.2, whereas respondent No.1, owner of the offending vehicle, is respondent No.1 and respondent No.2 is the petitioner in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts in brief are that on the night of 25.06.2003, one

P. Sridevi, wife of the petitioner – claimant, along with her daughter P. Sravani boarded a bus at Gudipadu Village, Prakasam District and reached Patancheru destiny on 26.06.2003 morning hours and when the said bus alighted at the bus stand, with a view to go to home, the said Sridevi along with her daughter engaged an Auto bearing registration No.AP-23-V-0026 and when the Auto reached Vidya Associates and Developers near Novopan Factory on National Highway No.9, a Leyland Lorry Effluent Tanker bearing registration No.AAK-7667 coming from opposite direction on wrong side driven at high speed dashed the Auto, due to which impact, the Auto was crushed and the said Sridevi died on the spot, whereas her daughter sustained fracture and bleeding injuries and while taking treatment at Gandhi Hospital, Secunderabad, she also succumbed to the injuries. The concerned police registered a case against the Effluent Tank driver and filed charge sheet before the Judicial Magistrate of First Class, Sangareddy. Hence, the petitioner laid the claim for Rs.3,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, respondent No.1 – owner of the Effluent Tanker opposed the claim by filing counter pleading that the driver, owner and insurer of the Auto are also necessary parties and in their absence, the claim cannot be adjudicated upon and therefore, the claim

petition is liable to be dismissed for non-joinder of necessary parties.

6. Respondent No.2 also completely denied the claim and attributed rash and negligent driving to the driver of the Auto and therefore, sought to exonerate it by dismissing the claim petition against it.

7. Based on the said pleadings, the Tribunal has framed three issues. During enquiry, petitioner examined himself as PW.1 besides examining one Md.Chandpasha as PW.2, an eyewitness to the occurrence, and marked Exs.A1 to A6. On behalf of the respondents, no witnesses were examined, but a copy of the Insurance Policy was marked as Ex.B1 on consent.

8. The Tribunal, having analysed the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, based on Ex.A4 – Post Mortem Examination Report, taken the age of the deceased as 27 years as spoken to by PWs.1 and 2, and the monthly income at Rs.1,800/- as the deceased was a Beedi maker by profession, and after deducting $\frac{1}{3}$ rd therefrom, by applying multiplier '17.37', worked out the loss of dependency at Rs.2,50,128/-. Besides the same, the Tribunal has also granted Rs.10,000/- towards consortium, Rs.10,000/- towards loss of love and affection

of his wife, Rs.10,000/- towards transport charges and funeral expenses, Rs.10,000/- towards gratuitous services and Rs.10,000/- towards loss of estate, thus, totalling to a sum of Rs.3,00,000/- meeting the claim made by the petitioner.

9. It is the aforesaid order which is under challenge in the instant appeal on the ground that the amount awarded by the Tribunal is exorbitant and excessive, that the Tribunal ought to have awarded amount only for loss of service, that the husband of the deceased cannot be construed as dependant on her and even the amounts awarded under various heads are not justified and therefore, sought to set aside the order and decree under challenge.

10. Heard Sri V. Sambasiva Rao, learned counsel for the appellant and Sri Raj Kumar Rudra, learned counsel for respondent No.2. Respondent No.1 was not served with notice and a memo was also filed. However, the absence of respondent No.1 does not make any difference in adjudicating upon the controversy herein. Though the appeal is preferred by the Insurance Company, it has challenged only the quantum of compensation awarded by the Tribunal.

11. Perused the order under challenge and the

evidence on record.

12. The finding recorded by the Tribunal that the deceased was a Beedi maker is based on appreciation of evidence and nothing is elicited in the cross – examination of PWs.1 and 2 to overturn that finding recorded by the Tribunal. Therefore, the Tribunal taking the income of the deceased at Rs.1,800/- per month cannot be faulted with and so also, the 1/3rd deduction made towards her personal expenses and remainder Rs.1,200/- towards contribution to the family besides her services being rendered to the family. It is really a typical case where husband alone is the claimant, who lost his wife and daughter in one and the same accident. Be that as it may, the amount of Rs.3,00,000/- awarded by the Tribunal, by any stretch of imagination, cannot be viewed as excessive and it is just and adequate compensation determined in accordance with the well settled legal principles. There is absolutely no merit in the instant appeal.

13. Hence, the instant appeal is dismissed. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

March 31, 2016.

MD