HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2700 OF 2005

JUDGMENT:

The Instant appeal is preferred by respondent No.2 – M/s. New India Assurance Company Limited in M.V.O.P. No.533 of 2002, assailing the order and decree, dated 05-04-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum –

III Additional District Judge (Fast Track Court), Ongole (for short 'the Tribunal'), on the ground that policy was not in force on the date when the accident has occurred and the cover note was cancelled even prior to taking place of accident and, therefore, the Tribunal went wrong in fastening liability on it and, therefore, sought to set aside the award and decree.

2. The appellant and respondent No.4 herein, who are insurer and owner of bus bearing registration No.AP 27T 4311, respectively, are respondent Nos.1 and 2, respectively, in M.V.O.P. before the Tribunal and respondent Nos.1 to 3 are the petitioners.

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

4. The facts, in brief, are that on 28-08-2002,

while one Sunnam Brahmaiah, the unmarried son of petitioner Nos.1 and 2 and elder brother of petitioner No.3, was returning on his bicycle, at the outskirts of Giddalur, a bus bearing registration

No.AP 27T 4311 belonging to respondent No.1 driven by its driver in a rash and negligent manner came from opposite direction and hit his bicycle, due to which, he received injuries. Immediately, he was shifted to Government Hospital, Giddalur, where he was declared as dead. The petitioners claiming that they were dependants on the deceased, who was 28 years old, earning Rs.3,000/- per month as a mason, sought a compensation of Rs.2,00,000/- from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle respectively.

5. Respondent No.2, owner of the vehicle, remained *ex parte*.

6. Respondent No.2 – Insurance Company filed counter opposing the claim by raising general grounds of defence.

7. Basing on the said pleadings, the Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry, petitioner No.1 examined himself as PW.1 and marked Exs.A-1 to A-5 in order to substantiate their claim. On behalf of respondent No.2, an official from local branch was examined as RW.1 and marked Exs.B-1 and B-2, which are copies of cancelled cover-note and Motor Vehicle Inspector's report.

9. The Tribunal on appraisal of evidence on record held issue No.1 in favour of the petitioners. On issue No.2, placing reliance on decisions of Hon'ble Supreme Court in **New India Assurance Company v. Rula and others**[1] and **Oriental**

Insurance Company Limited v. Inderjit Kour and others[2], recorded
a finding that respondent No.2 cannot absolve its liability to indemnify third party liability as the payment of premium is not the concern of third party, and despite bar created by Section
64 VB, the Insurance Company if issued a policy to cover the vehicle without receiving any premium by reason of provisions of Sections 147 (5) and 149 (1), it became liable to indemnify third party liability. But, however, liberty was given to Insurance Company to recover the said amount from original owner after making its liability under the award. The Tribunal having fixed the earnings of the deceased at Rs.50/- per day or annual income at Rs.18,000/-; deducted 1/3rd towards his personal expenses and taken Rs.12,000/- towards contribution and applying multiplier '19', arrived at Rs.2,28,000/- towards loss of dependency, but restricted the same to Rs.2,00,000/- which is the claim made by the petitioners and, accordingly, granted the same with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal by respondent No.2 – Insurance Company contending in the grounds that the Tribunal, somehow, overlooked the documentary evidence under Exs.B-1 and B-2, and that the Tribunal ought not to have fastened the liability on Insurance Company for the reason that the policy was not in force by the date of accident and, therefore, sought to set aside the award and decree in so far as Insurance Company is concerned.

11. Heard Sri B. Devanand, learned Standing Counsel for the appellant – Insurance Company, and Sri Syed Ghouse Basha,

learned counsel for respondent Nos.1 to 3 - petitioners.

12. Perused the order under challenge and the evidence on record, both, oral and documentary let in by the parties.

13. In this case, since the deceased died in an unmarried status, certainly, the permissible deduction is not 1/3rd, but it should be 50% and, when the same is applied, the contribution works out to Rs.9,000/- per annum. The relevant multiplier is not '19', but the same is '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[3] and, accordingly, the loss of dependency works out to Rs.1,62,000/-**.** But, as seen from the order, no future prospects have been granted. In case the decision of the Hon'ble Supreme Court in **Munnalal Jain and another v. Vipin Kumar Sharma and others**[4] is applied, the petitioners are entitled to 50% towards future prospects in addition to the loss of dependency,
[i.e., Rs.81,000/- (50%) + Rs.1,62,000/-] and, thus, the compensation to which the petitioners are entitled, would work out to Rs.2,43,000/-, which is more than the amount granted by the Tribunal. In the said circumstances of the case, it can be held that the amount of Rs.2,28,000/- granted by the Tribunal need not be disturbed and, accordingly, the same is confirmed.

14. So far as the direction given by the Tribunal that respondent No.2 is permitted to recover the amount from the owner of the vehicle by paying the award of compensation initially, the same is also confirmed, since the decision of the Hon'ble

Supreme Court relied on by the learned counsel for the appellant in **United India Insurance Company Limited v. Laxmamma and others**[5], would not render any assistance to the appellant – Insurance Company for the reason that Insurance Company has not placed any material to show that the cancellation of policy was intimated before the accident had taken place. The accident, in this case, had taken place on 28-08-2002 and cover note was issued on 09-08-2002. Though, the Insurance Company contends that such cover note was cancelled on 12-08-2002, no material has been placed, though, RW.1 was examined to show that the cancellation of cover note dated 12-08-2002 was communicated to respondent No.1, owner of the vehicle, before the accident had taken place. However, learned counsel for the appellant, during the course of arguments, having ascertained, has reported that no material is placed to show that the cancellation of cover note was intimated to respondent No.1 before the accident had taken place. Hence, there is no necessity to probe anything further. Therefore, the finding with regard to determination of compensation by the Tribunal as well as initial liability fixed on Insurance Company to pay the amount initially and recover the same from the owner does not warrant any interference.

15. Accordingly, the appeal is dismissed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 12, 2016.

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[1]. 2000 ACJ 630

[2]. 1998 ACJ 123

[3]. (2009) 6 Supreme Court Cases 121

[4]. (2015) 6 SCC 347

[5]. (2012) 5 SCC 234