THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.NO.2387 OF 2005 AND C.M.A.NOS 2705,3038 AND 3833 OF 2004

COMMON JUDGMENT:

Since these appeals arise out of two O.Ps from the same accident, they are being disposed of by way of this common judgment.

2. MACMA No. 2387 of 2005 arises out of order in O.P.No.724 of 2001 and CMA No. 2705 of 2004 arises out of order in O.P.No.704 of 2001 and both the above appeals are filed by the Insurance Company. The other two appeals viz., C.M.A.Nos 3038 and 3833 of 2004 are filed by the claimants in O.P.Nos.724 and 704 of 2001 respectively,

3. The Tribunal passed common order, dated 05-11-2003 awarding an amount of Rs.1,84,500/- in O.P.No.704 of 2001 and Rs.32,000/- in O.P.No.724 of 2001. The Tribunal in its common order held that the Insurance Company was liable to pay compensation to the third party and recover the amount from the 1st respondent by initiating separate proceedings against the insured as it opined that the Insurance Company was defrauded by the 1st respondent in obtaining the policy.

4. Learned counsel for the appellants in MACMA No.2387 of 2005 and CMA No.2705 of 2004 did not contest the appeals with regard to pay and recover as the Tribunal on the basis of oral and documentary evidence held that some substantial premium was paid to the Insurance Company and on the ground of non payment of entire premium, the Insurance Company cannot avoid its liability to pay the compensation to the third party. In the absence of any challenge to the said finding, the appeals filed by the Insurance Company fail and they are liable to be dismissed.

5. With regard to claim of the appellants seeking enhancement of compensation, it has to be seen that O.P.No.704 of 2001 was filed claiming compensation of Rs.2,75,000/- for the death of one P.Chinna Reddy in an accident that occurred on 27-06-2001. He was aged about 40 years at the time of the accident and was doing kirana business by earning Rs.50,000/- per annum. The Tribunal noticed that there is no evidence to show that he was earning Rs.50,000/- per annum and fixed the income at Rs.15,000/- per annum

and after deducting one third of the amount and by applying multiplier 16, the Tribunal arrived at compensation of Rs.1,60,000/-. An amount of Rs.12,500/- was awarded towards loss of estate, Rs.10,000/- was awarded towards loss of consortium and Rs.2,000/- was awarded towards funeral expenses. Thus, in all an amount of Rs.1,84,500/- was awarded. Seeking enhancement of the said amount, C.M.A.No.3833 of 2004 was filed.

6. Though case of the claimants is that the deceased Chinna Reddy was doing kirana business, no evidence was let in. Even an unskilled person in the year 2001 could be earning Rs.100/- per day and if it is assumed that the deceased was earning the said amount, his monthly earning would be

Rs.3,000/-. If one third of the amount is deducted towards personal expenses, the monthly earnings comes to Rs.2,000/-. To the said amount, if appropriate multiplier 16 is applied, it comes to Rs.3,84,000/-. In view of latest judgment of the Hon'ble Supreme Court in **RAJESH V RAJBIR SINGH** [1], the loss of consortium should be enhanced from Rs.10,000/- to Rs.50,000/- and the funeral expenses from Rs.2,000/- to Rs.10,000/-. However, loss of estate awarded by the Tribunal is not allowed by this Court. Though the claim was made for an amount of Rs.2,75,000/-, in view of latest judgments of this Court, the Tribunal has to award just compensation. In the circumstances, the award of the Tribunal awarding Rs.1,84,500/- for the death of Chinna Reddy is enhanced to Rs.4,44,000/- and the enhanced compensation amount carry interest at 9% p.a., from the date of petition till the date of realisation. However, the enhanced amount beyond Rs.2,75,000/- shall be paid to the claimants only after payment of deficit court fee.

7. With regard to the award in O.P.No.724 of 2001 is concerned, claim was made for an amount of Rs.1,50,000/- for the injuries sustained by the claimant. He was aged about 30 years and he sustained the following injuries:

> 1.Deformity below left knee joint with a bleeding injury. Fracture tibia clinically.
>
> 2.Deformity over the middle of right chin, fracture clinically.
>
> 3. A laceration of 2" x 1" over right side of chest.

It was stated that the injured was carrying cloth business, but no evidence was adduced in support of the said contention. The Tribunal took the avocation of the injured as an unskilled labour and fixed income at Rs.15,000/- per annum. Taking into consideration the permanent disability of the claimant due to shortening of 2/4” of right leg, an amount of Rs.18,000/- was awarded towards compensation for loss of future earnings. For the injuries sustained by the claimant, an amount of Rs.12,000/- was awarded. An amount of Rs.2,000/- was awarded towards medical expenses, transportation, extra nourishment and other incidental expenses. Thus, in all an amount of Rs.32,000/- was awarded for the injuries to the claimant. Seeking enhancement of compensation, CMA No.3038 of 2004 is filed.

8. It is not in dispute before this Court that as per Ex.A6, the claimant sustained the above injuries and the injury Nos. 1 and 2 are grievous fracture injuries. Though the other two injuries are simple in nature, the Tribunal awarded only Rs.5,000/- each to the two fracture injuries. The said amount of Rs.10,000/- to the two fracture injuries is enhanced to Rs.30,000/- retaining Rs.2,000/- to the two simple injuries. The compensation for loss of future earning capacity due to shortening of leg was treated as 7.5% permanent disability. The loss of earning capacity varies from person to person depending upon the avocation. Hence, this Court is not inclined to disturb the amount of Rs.18,000/- awarded by the Tribunal. The claimant was initially treated in Government General Hospital, Kurnool and he was discharged against medical advice. However, the claimant must have undergone pain and suffering for the injuries sustained by him and keeping in view of the nature of injuries, this Court feels that an amount of Rs.10,000/- towards pain and suffering would meet the ends of justice and accordingly, the said amount is awarded. An amount of Rs.2,000/- awarded towards transportation, extra nourishment and other incident expenses is grossly inadequate and the same is enhanced to Rs.10,000/-. Thus in all, an amount of Rs.70,000/- is awarded to the claimant in place of Rs.32,000/- awarded by the Tribunal and the enhanced compensation amount carry same rate of interest at 9% p.a., from the date of petition till the date of realisation.

9. Accordingly, MACMA No.2387 of 2005 and CMA No.2705 of 2004 filed by the Insurance Company are dismissed and CMA No.3038 of 2004 is partly allowed and CMA No.3833 of 2004 is allowed. No order as to costs. Miscellaneous petitions, if any pending in these appeals shall stand closed.

A.RAMALINGESWARA RAO, J

DATED: 28-01-2016

Hsd

---

[1] 2013 ACJ 1403