HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.1209 OF 2013

JUDGMENT:

Aggrieved by the order in decree dated 19.10.2012 passed in O.P.No. 498 of 2011 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge(FTC), Ananthapur,, the appellant- ICICI Lombard General Insurance Company Limited, preferred this appeal.

2. The respondents 1 and 2 herein are the claim petitioners filed O.P.No.498 of 2011 under Sections 140 and 166-A of Motor Vehicles Act, 1988 claiming compensation of Rs.5 lakhs on account of death of 6 years old daughter in a motor vehicle accident occurred on 08.06.2011.

3. The brief averments of the petition filed before the Tribunal are that on 08.06.2011 at 5 p.m. while the deceased was waiting on the left side of the road to cross the road and in the meanwhile one maruthi Car bearing No.KA-19-P-7290 came at high speed in a rash and negligent manner and ran over on the left foot of the deceased, minor girl. He sustained grievous injuries and was admitted in Govt.General Hospital,Ananthapur. After first aid, she was referred to YSR Hospital, Ananthapur and from there to NIMS Hospital, Hyderabad. She was treated as inpatient for 20 days in NIMS Hospital, and an operation was conducted and thereafter she was discharged. They incurred medical expenditure of Rs.3 lakhs and transport and attendant charges Rs.50,000/- for the treatment. The girl died on 04.08.2011 due to the injuries suffered by her in the

accident. The police registered a case in Crime No.29 of 2011 against the driver of the offending vehicle. The first respondent remained ex parte. The second respondent filed counter alleging that due to the negligence of the deceased, the accident has occurred and therefore, the second respondent is not liable to pay any compensation. It is further alleged that the offending vehicle was not insured with the second respondent by the date of accident. As such, the second respondent is not liable to pay compensation. It is further alleged that the driver of the vehicle was not having valid driving licence to drive the car at the time of the accident and that the car was not having valid permit and fitness certificate to ply and that the claim of the claimants is excessive and therefore, sought for dismissal of the petition with costs.

4. The Tribunal on examination of the witnesses PWs.1 to 3 on behalf the petitioners and marking documents Exs.A-1 to A-8, X-1 and X-2 and on behalf of the respondents RW-1 and marked document Ex.B-1, allowed the original petition awarding compensation of Rs.3,75,000/- with interest at 7.5% per annum.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents.

6. The claimants are the parents of the deceased girl who was aged about 6 years by the date of accident. The girl died in a motor vehicle accident. The accident occurred on 08.06.2011 and the girl died due to the injuries on 04.08.2011. On the fateful day, the girl was waiting on the left side of the road to cross the road

and in the meanwhile one Maruthi car came and ran over her left foot and she received grievous injuries in the accident. Thereafter, she had taken treatment in the Govt. Hospital, Ananthapur and from there she was shifted to YSR Hospital, Ananthapur, later she had taken treatment in NIMS Hospital, Hyderabad. PWs.2 and 3 are the Doctors who treated her in NIMS Hospital, Hyderabad. The Tribunal on consideration of the evidence of PWs.1 to 3 and the documents Exs:X-1 and X-2 case sheets arrived at a conclusion that the deceased died due to the injuries suffered by her in the accident. The claimants hve made a claim of Rs.3 lakhs towards medical expenditure and Rs.50,000/- towards transportation and attendant charges and other expenses. The Tribunal on consideration of the evidence awarded Rs.3,75,000/- as against the claim of Rs.5 lakhs.

7. Aggrieved by the award passed by the Tribunal, the insurer filed the appeal contending that the deceased died two months after the accident and there is no proof that she died due to the injuries received in the accident. It is contended that the claimants have not produced any evidence to prove that the deceased died due to the injuries suffered by her in the accident.

8. As a matter of fact, the Tribunal on consideration of the evidence of PWs.2 and 3 the medical officers and the documents Exs:A-2 wound certificate, X-1 case sheet pertaining to YSR Hospital, and Ex.A-5 outpatient cards , Ex.A-8 NIMS Hospital bills and Ex.X-2 case sheet pertaining to NIMS Hospital, Hyderabad, Ex.A-4 death certificate of the deceased has concluded that the deceased died

because of the injuries suffered by her in the accident. It is pertinent to refer to para 12 of the judgment of the Tribunal which is relevant at this juncture for better appreciation of facts of the case and finding of Tribunal.

> *:para 12. As per Ex.A-4 death certificate of the deceased Kumari P.Keethana, shed died on 4.8.2011. The correctness of Ex.A-4 has not been disputed by the second respondent while PW-1 was in the witness box. The treatment taken by the deceased before her death as deposed by PW-2 and PW-3 in YSR Hospital, Ananthapur and NIMS, Hyderabad has not been disputed by the second respondent except contending that the bills from the said hospitals excessively mentioned in order to claim compensation. In view of the above circumstances and in view of not disputing the death certificate under Ex.A-4 the second respondent cannot contend that the deceased has not died due to injuries suffered by her in the accident. Hence, I hold that the deceased died due to accident injuries only 4.8.2011 as per Ex.A-4 death certificate."*

9. There is ample evidence on record which clearly prove that the deceased died due to the injuries suffered by her in the accident. Admittedly, the accident occurred on 08.06.2011 and the death occurred within two months, from the date of the accident. There is evidence on record to show that she had been taking treatment from time to time in different hospitals during these two months time. She had undergone a surgery for the injuries.

PW-2 is the Doctor working in YSR Hospital, Anantapur who testified about the admission of the deceased in his hospital on 08.06.2011. It is revealed from his testimony that the deceased was admitted in the hospital with crush injury on the left leg, and compound injury bone loss contamination, and that she was operated on 9.06.2011 for debridement and the external fixation was done, and debridement K. wire fixation was done and she was discharged from the hospital on 10.06.2011, and she was referred to High Centre for Plastic Surgery. He further testifies that Ex.A-6 is the prescriptions and bills issued by the hospital and Ex.A-2 is the wound certificate issued by him and Ex.X-1 is the case sheets relating to the hospital.

10. PW-3 is Additional Professor working in the department of Plastic Surgery, NIMS, Hyderabad. His testimony reveals that on 121.06.2011 the deceased was admitted with crush injury of left foot and fracture of both bones, and left leg, and she had undergone operations three times. It is further revealed that on 12.06.2011 debridement was done, and she was asked to undergo second operation as both blood vessels were cut. On 17.06.2011 flap cover and skin grafting was done to cover the wound of the foot. On 24.06.2011 partial debridement of necrosed was done, and the wound was left open for skin grafting. Later, she was discharged from hospital on 26.06.2011. She was advised dressing, medication and follow up for plastic surgery dressing.

11. The Tribunal on consideration of the testimony of PWs.2 and 3 has rightly come to the conclusion that the deceased died due to

the injuries suffered by her in the accident. The conclusions reached by the Tribunal are based on medical evidence, that due to the injuries suffered by her, the death occurred within two months from the date of the accident. There is proximity of cause of death. There is no other material brought by the insurance company to prove that the death is natural and not arising out of the injuries suffered by her in the accident. As per Section 106 of the Indian Evidence Act, the burden shifts on the insurer, to prove that the death did not occur due to the injuries suffered by the deceased in the accident and it was a case of natural death, when the claimants discharged their burden.

12. Section 106 of the Indian Evidence Act reads as under:

> 106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
> Illustrations
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
> (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

13. In view of Section 106 of the Evidence Act, the entire act, the burden lies on the insurer when he has contended that the death was natural. But, the burden is not discharged by any evidence.

14. Therefore, the conclusion drawn by the Tribunal basing on the medical evidence that the death occurred due to the injuries suffered by her in the accident, are correct. Therefore, there are no

valid grounds to interfere with the findings of the Tribunal in this regard.

15. The further contention is in respect of the quantum of compensation awarded by the Tribunal. It is contended that the Tribunal has awarded the compensation without any reasonable calculation. The multiplier method was not followed by the Tribunal in assessing the disability in awarding the compensation. It is further contended that the Tribunal has taken notional income of the deceased as Rs.15,000/- per annum.

16. Learned counsel for the appellants, by placing reliance on para 39 of the decision of the Apex Court in Kishan Gopal v. Lala[1], submitted that the Tribunal awarded inadequate compensation without following the multiplier method and the ratio in the above citation. Para 39 of the judgment reads as under:

> "39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation {(2009) 6 SCC 121}, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas {(1994) 2 SCC 176, which is referred to in Lata Wadhwa case {(2001) 8 SCC 197} and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons

[1] (2014) 1 SCC 244

> the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

17. Since this is an appeal filed by the insurer, as there is no cross objections or any appeal by the claimants, compensation cannot be enhanced. The findings of the Tribunal with regard to awarding of quantum of compensation cannot be interfered with in this appeal for reduction or for enhancement.

18. Therefore, there are no valid grounds, to interfere with the findings of the Tribunal for reducing the compensation awarded by Tribunal.

19. In the result, the appeal is dismissed. The order and decree dated 19.10.2012 passed in O.P.No. 498 of 2011 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge(FTC), Ananthapur is confirmed.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

G.SHYAM PRASAD, J

Date:31.03.2017
ccm

HON'BLE SRI JUSTICE G.SHYAM PRASAD

<u>MACMA No.1209 OF 2013</u>

Date:31.03.2017

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