HON'BLE MRS. JUSTICE ANIS

M.A.C.M.A.NO.1438 OF 2010

JUDGMENT:

This appeal is filed by the appellant/Bajaj Alianz General Insurance Company-2nd respondent (for short "Insurance Company") under Section 173 of the Motor Vehicles Act,1988 (for short "M.V.Act") aggrieved by the award passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad in O.P. No.99 of 1999, granting compensation of Rs.5,24,000/- to the petitioners.

2. The above said O.P is filed under Section 166(1) (c) of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules by the petitioners/claimants claiming compensation of Rs.10,00,000/- for the death of the deceased-Arole Devidas in a motor vehicle accident that occurred on 23-09-2008.

3. The brief averments made in the petition are that on 23-09-2008 the deceased-Arole devidas was travelling an Auto bearing No.AP-25/V-4536 from Saloora village to Mandarna village and when the Auto reached the limits of Saloora village, in the mean time the driver of the Auto drove the vehicle in a rash and negligent manner at high speed due to which the deceased fell down from the Auto and sustained skull fracture and other injuries. He was

shifted to Government Hospital, Bodhan and later to Hyderabad and en route to Hyderabad he succumbed to injuries. Further, the case of the petitioners is that prior to the accident, the deceased was 34 years old, hale and healthy and was doing agriculture and also doing milk and vegetable business and earning an amount of Rs.2,50,000/- per annum and that the entire amount was contributing to the family. Therefore, the petitioners prayed to grant compensation against the owner of the vehicle as well as insurer.

4. The 1st respondent remained *ex parte*. 2nd respondent filed counter and denied the averments made in the petition affidavit and specifically pleaded that the driver of the vehicle was not holding an effective driving licence to drive the Auto at the time of accident and the owner of the vehicle handed over the possession of the vehicle to the driver having wilfully known that the driver did not possess any valid and effective driving licence. Therefore, owner is only liable to pay the compensation.

5. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioners Pws.1 to 3 were examined and marked Exs.A-1 to A-9. On behalf of the respondents, Rw.1 and 2 were examined and Exs.B-1 to B-4 got marked.

6. After considering the oral and documentary evidence, the Tribunal granted an amount of Rs.5,24,000/- to the petitioners along with interest @ 7.5% per annum.

7. Aggrieved by the award passed by the Tribunal, the 2nd respondent-Insurance Company filed the present appeal.

8. The learned counsel for the appellant argued that the Tribunal erred in applying the multiplier "16" instead of 15; further the Tribunal also taken the notional income of the deceased as Rs.4,000/- in stead of Rs.3,000/- and the same is excessive and exorbitant and prayed the court to allow the appeal.

9. On the other hand, the learned counsel for the respondents/petitioners not present. No representation is made.

10. Having regard to the submission made by the counsel for the appellant, the only point that arises for consideration is:-

> "Whether the appellant/Insurance Company has made out any case to set aside the award dated 01-07-2010 in O.P.No.99 of 1999 passed by the Tribunal?

11. POINT:-

A perusal of the case record and award shows that there is no dispute about the manner of the accident in which the deceased died due to rash and negligent driving of the driver of the Auto. In the appeal grounds, the appellant has taken a specific plea that the driver of the Auto was not holding an effective driving licence at the time of accident and 1st respondent thus violated the terms of the policy. Now, it is well settled law by the judgment dated 03-07-2017 of the Hon'ble Supreme Court in *Mukund Dewangan Vs. Oriental Insurance Company Limited* [in Civil Appeal No.5826 of 2011], wherein the Apex Court held in para.46(ii), which reads as under:-

> "A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form."

12. Therefore, according to the above principle, the driver is competent to drive the transport vehicle and thus the 1st respondent has not violated any conditions of policy. Thus, as per the judgment of *Sarla Verma and others Vs. Delhi Transport Corporation and another*[1] the relevant multiplier is '15' and further the petitioners has not filed any proof of income of the deceased and, therefore, the notional income of the deceased has to be taken as

[1] (2009) 6 SCC 121

Rs.3,000/- per month in stead of Rs.4,000/-. Therefore, the annual income of the deceased comes to Rs.3,000/- x 12 =Rs.36,000/- and after deducting 1/3rd towards his personal expenses, the net amount comes to Rs.24,000/-. Thus, the compensation towards loss of dependency would work out to Rs.3,60,000/- [Rs.24,000/- x multiplier "15"] as against Rs.5,12,000/- by applying the above multiplier. The Tribunal rightly granted an amount of Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses of the deceased.

13. Thus, the total compensation payable to the claimants comes to Rs.3,72,000/- (Rs.3,60,000/- + Rs.12,000/-).

14. Accordingly, the Appeal is partly allowed while reducing the compensation awarded by the Tribunal from Rs.5,24,000/- to Rs.3,72,000/- along with interest @ 7.5% per annum from the date of petition till date of realisation. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

02.08.2017
TSNR