HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.2208 of 2005

JUDGMENT:

1. This appeal is filed by the Insurance company against the award dated 17.07.2004 passed in O.P No.569 of 1998 by the District Judge, Motor Vehicle Accidents Claims Tribunal, Mahabubnagar. Respondents 1 to 5 herein are the claimants and the 6th respondent is the owner of the crime lorry in the said O.P.

2. The facts relating to the case are that on 20.01.1997 the deceased Boya Chennaiah and his friend Sathaiah were coming on a Scooter bearing No.A.P.28.F.4675 along with some construction material from Shadnagar to Balanagar and when they reached Raikal gate at about 4.00 P.M., a lorry bearing No.K.A.34.1131, driven by its driver, came in the opposite direction at high speed in a rash and negligent manner and dashed against the Scooter, as a result of which, the deceased and his friend fell down and sustained multiple bleeding injuries. Subsequently, the deceased succumbed to the injuries while undergoing treatment in Osmania General Hospital, Hyderabad. Consequently, the claimants, who are the legal

representatives of the deceased, laid a claim before the Tribunal seeking compensation of Rs.4,00,000/-.

3. The Insurance Company resisted the claim by filing counter, *inter alia*, contending that the deceased himself drove the Scooter negligently and hence he contributed for the negligence in causing the accident. It is further contended that the insurer of the Scooter was not made as party to the proceedings and hence the Insurance Company is not liable to pay any compensation to the claimants.

4. During enquiry, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the Insurance Company, Ex.B1 was marked. P.W.1 is the first petitioner-wife of the deceased and P.W.2 is the eye-witness to the accident. Ex.A1 is the copy of FIR, Ex.A2 is the copy of inquest report, Ex.A3 is copy of report of Motor Vehicle Inspector, Ex.A4 is the copy of insurance certificate, Ex.A5 is the copy of Registration Certificate of scooter, Ex.A6 is the driving licence of deceased and Ex.A7 is the cover note of insurance of scooter. Eventually, at the culmination of enquiry, basing on the evidence of P.W.2 and Exs.A1 to A3, the Claims Tribunal held that the accident occurred due to rash and negligent driving of the lorry by its driver and then the Tribunal assessed the compensation and arrived at Rs.3,90,000/- and passed the

award accordingly. Assailing the said award, the appellant-Insurance Company filed this appeal.

5. Though many grounds have been taken to challenge the Tribunal's award, the learned Standing Counsel for the appellant-Insurance Company confined his argument to the interest part and contended that the Tribunal ought not to have granted interest @ 9% P.A. and prayed to reduce the same to 7.5% P.A. He has also not touched upon the quantum of compensation amount awarded by the Tribunal.

6. On the other hand, learned Counsel for the respondents-claimants supports the judgment of the Claims Tribunal which is quite legal and valid and submits that no interference is called for.

7. I have considered the respective contentions of the parties and perused the impugned award passed by the Claims Tribunal.

8. As already stated there is no contest that the accident occurred due to the rash and negligent driving of the offending vehicle by its driver. However, P.W.2, who was the pillion rider of the Scooter and eyewitness to the accident, stated in his evidence that while himself and the deceased were proceeding towards Balanagar at about 4.00 P.M. on 20.01.1997, the crime lorry being driven by its driver came in the opposite direction

at high speed and hit the scooter, thereby they fell down and sustained multiple injuries and subsequently the deceased died while undergoing treatment in the hospital. Therefore, the findings of the Claims Tribunal in this regard are confirmed.

9. Coming to the question of compensation amount, there is also not much contest from the insurance company. The Tribunal, on evidence found that the deceased, aged about 38 years, was working as Mason on the date of his death, fixed his income at Rs.3,000/- per month and Rs.36,000/- per annum and assessed the loss of dependency at Rs.24,000/- after deducting 1/3rd towards personal expenses of deceased. By applying a suitable multiplier of 15, the Tribunal granted Rs.3,60,000/- towards loss of dependency, apart from Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium. Thus the Tribunal granted a total compensation of Rs.3,90,000/- to the claimants. Considering all these aspects, the Claims Tribunal rightly held that the claimants are entitled to the compensation and accordingly awarded a total compensation of Rs.3,90,000/-, The compensation awarded by the Tribunal, in my view, is just and reasonable.

10. The Tribunal granted interest @ 9% P.A. on the compensation which is assailed in this appeal by the learned Standing Counsel appearing for the Insurance Company that

considering the prevailing interest rates being charged by the Nationalized Banks, the rate of interest is on higher side. Accepting the said contention, the rate of interest is reduced from 9% P.A to 7.5% P.A. Subject to the modification in the rate of interest, the award passed by the Tribunal is upheld.

11. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

10-02-2017
Gsn