THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.3002 of 2005

JUDGMENT:

The Claimants in O.P.No.196 of 2001 on the file of the Court of I Additional Motor Accidents Claims Tribunal, Nellore are the appellants in the present appeal, filed under Section 173 of Motor Vehicles Act.

2. This appeal challenges the common order dated 15.7.2005 passed in O.P.Nos.196, 439, 440 and 441 of 2001. The cause for filing the said O.Ps., arose due to the motor accident, which took place on 17.8.2000 when the Tractor and Trailor in which the deceased in O.P.No.196 of 2001 and the Claimants in other O.Ps. were travelling.

3. The Claimants in O.P.No.196 of 2001 who are the appellants herein and who are the husband and son respectively of the deceased, Smt.Vedicherla Bujjamma claimed a sum of Rs.1,50,000/- with interest and costs. The above said O.Ps. were clubbed and common order was passed by the Tribunal on 15.7.2005. The Tribunal granted a sum of Rs.1,50,000/- with interest at 7.5% per annum in favour of claimants in O.P.No.196 of 2001. In the present appeal, the appellants herein are seeking enhancement of the said compensation and assailing the refusal to fasten the liability on the Insurance Company.

4. Heard the learned counsel for the appellants and Sri T.K.Sridhar, learned Standing Counsel for Respondent Insurance Company.

5. It is contended by the learned counsel for the claimants/appellants that the Tribunal, having arrived at the figure more than the amount claimed, ought to have granted atleast the said amount and ought not to have

restricted the claim only to Rs.1,50,000/-. It is the further submission of the learned counsel that the Tribunal grossly erred in refusing to grant the relief against the 2nd respondent Insurance Company. It is also the submission of the learned counsel that in respect of other heads also, the Tribunal granted paltry sums of money. It is also the submission of the learned counsel for the appellants that the amount fixed by the Tribunal towards income is untenable and not in accordance with law.

6. On the other hand, it is vehemently contended by the learned Standing Counsel for Insurance Company that there is no illegality nor there exists any infirmity in the impugned order, as such, the same is not amenable for any correction under Section 173 of M.V. Act.

7. A perusal of the order under challenge, in vivid and candid terms, reveals that the Tribunal on the issue, pertaining to rash and negligence, found categorically that the accident occurred due to rash and negligent driving of the driver. The Tribunal, while dealing with the issue as to the liability to pay the compensation amount, held that the Insurance Company cannot be saddled with liability. It is required to be noted in this context that in fact the claimants in O.P.No.440 of 2001, which arose out of the same accident, approached this Court by way of M.A.C.M.A.No.2910 of 2005 and this Court, following the judgment of the Hon'ble Supreme Court referred to therein, allowed the said appeal on 24.2.2011, directing the Insurance Company to satisfy the awarded amount in favour of claimants therein and to recover the same from the owner of the vehicle. Therefore, the conclusion of the Tribunal to the extent of refusing to fasten the liability on the Insurance Company cannot be sustained.

8. Coming to the issue pertaining to quantum of compensation, the Tribunal, taking into consideration the avocation of the deceased and the age of the deceased as mentioned in the application and by calculating the daily income at Rs.50/- per day and by adopting the multiplier 17 and after deducting 1/3rd of the same, fixed the compensation as Rs.2,01,960/-, but ordered payment of Rs.1,50,000/- as claimed in the petition. According to the learned counsel for the appellants, the said fixation of the amount at Rs.50/- per day i.e. Rs.1500/- per month and Rs.18000/- per year is unsustainable in view of the judgment of the Hon'ble Apex court in Lata Wadhwa and Ors. vs. State of Bihar and Ors.[1]. A copy of the said judgment is placed on record by the learned counsel. In the said judgment, the Hon'ble Apex Court directed fixation of minimum of Rs.3,000/- per month and Rs.36,000/- per annum towards income of the house wives. Therefore, if the income of the deceased is calculated at Rs.3,000/- per month and if 1/3rd of the amount is deducted towards personal expenses, the same would come to Rs.24,000/- per annum. As per the judgment of the Hon'ble Apex Court in Smt. Sarla Verma and ors. v. Delhi Transport Corporation and another[2], the multiplier which needs to be adopted for the persons between 31 and 35 years of age should be 16. If the said multiplier is adopted, the amount for which the claimants would be entitled would come to Rs.3,84,000/- (Rs.24,000/- x 16). The Tribunal fixed a sum of Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. As per the judgment of the Hon'ble Apex Court in National Insurance Company Limited v. Pranay Sethi and Ors.[3], apart from the loss of estate of Rs.15,000/-, the claimants are also entitled for a sum of Rs.15,000/- towards funeral expenses.

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[1] (2001) 8 SCC 197
[2] (2009) 6SCC 121
[3] SLP (Civil) No.25590/14 dated 31.10.17

9. In the result, this appeal is allowed, granting compensation of Rs.4,14,000/- with interest at 7.5% per annum from the date of petition till the date of realisation. It is also made clear that the claimants/appellants herein are entitled to their shares proportionately as fixed by the Tribunal. The Insurance Company is directed to satisfy the award amount in favour of the claimants and to recover the same from the owner of the vehicle. It is made clear that on the enhanced amount, the appellants shall pay the court fee. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 11.12.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.3002 of 2005

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