HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 560 of 2010
AND
CROSS OBJECTIONS(SR) No.26513 of 2010

COMMON JUDGMENT:

This appeal is filed by the Oriental Insurance Company, aggrieved by the order dated 29.05.2009 passed in MVOP No.451 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, West Godavari District at Eluru.

2. The respondents herein filed Cross-objections (SR) No.26513 of 2010 aggrieved by the order dated 29.05.2009 passed in MVOP No.451 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, West Godavari District at Eluru.

3. Heard the arguments of the learned counsel for the claimants and the learned counsel for the respondents.

4. The contention of the insurer is that the deceased travelled in the crime vehicle as an unauthorised passenger, as such, there is no coverage of policy. There is coverage for the gratuitous passenger as no premium is paid for coverage of the risk of gratuitous passenger under Ex.B_1.

5. In this regard the finding of the tribunal is that the deceased travelled as owner of goods. The Tribunal considering the evidence of PW-2, arrived at a conclusion that the deceased travelled as owner of the goods carrying coconuts in the lorry. The Tribunal basing on the evidence of PWs.1 to 3 concluded that the deceased had engaged lorry bearing No.AP-16-T-3819 carrying 25 bags of coconuts to Vijayawada, paying an amount of Rs.5,000/- and he sat in the cabin as owner of the goods, and travelled in the lorry.

6. The insurer placed reliance on Ex.B-2 trip sheet of the lorry involved in the accident. But, the Tribunal held that the trip sheet Ex.B-2 is a suspicious document as the insurer has not taken any steps for production of original document pertaining to the trip sheet Ex.B-2. The Tribunal has rightly come to a conclusion that the deceased travelled as owner of the goods in the crime vehicle, and held the respondents 1 to 3 are jointly and severally liable for payment of compensation.

7. The observation of the Tribunal that the deceased travelled as owner of the goods basing on the evidence of Ex.A-4, inquest report of the deceased. In Ex.A-4 the deceased was identified by panch witness as Satyanarayana and that he does coconut business. The Tribunal basing on the inquest Ex.A-4 believed that the deceased travelled as owner of the goods in the vehicle. The Tribunal, on consideration of the document Ex.A-4, the inquest report, came to the conclusion that the deceased travelled as owner of the goods, by engaging the lorry for carrying 25 bags of coconuts, by sitting in the cabin. Therefore, in the light of the clear evidence that deceased travelled as owner of goods, there are no grounds to set aside the finding of the Tribunal, in holding the respondents 1 to 3 liable to pay compensation to the claimants.

8. The other contention of the insurer is that the quantum of compensation awarded by the Tribunal is excessive. The claim of the claimants was Rs.3 lakhs; whereas the Tribunal has awarded Rs.3,69,500/- exceeding the claim.

9. It is pertinent to note that the Tribunal has to grant just and reasonable compensation. It was held in the case of *Nagappa Vs.*

Gurudayal Singh[1] that just and reasonable compensation should be awarded in every case. Even if the compensation exceeds the claim of the claimants, the Tribunal can award compensation, provided, it is just and reasonable.

10. The insurer's contention is that the deceased was unmarried. Therefore, 50% of his income to be deducted towards his personal expenditure. The said ratio was laid down in the case of *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*[2]. But, the tribunal has not deducted 50% towards the personal expenditure of the deceased out of his income.

11. It is contended on behalf of the claimants submitted that the Tribunal has taken the age of the mother of the deceased for the purpose of assessing the loss of dependency. But, as per ratio laid down in decisions of the Apex Court in *Amrit Bhanu Shali and others Vs. National Insurance Company Limited and others*[3], *Reshma Kumari and others Vs. Madan Mohan and another*[4] and *Munna Lal Jain and others Vs. Vipin Kumar Sharma and others*[5], though the deceased is a bachelor, the multiplier applicable to the age group of the deceased alone has to be taken into consideration.

12. It is further contended that the Tribunal has taken the notional income of the deceased as Rs.3,000/- per month which is on higher side; whereas the claimants' contention is that as the deceased was doing business in fruits and coconuts, and earning Rs.10,000/- per month.

13. In fact, the Tribunal has rightly taken the notional income of the deceased as Rs.3,000/- per month, as there was no proof of income of the

[1] 2003 (2) SCC 274
[2] 2009 (6) SCC 121
[3] 2012 (11) SCC 738
[4] 2013 (9) SCC 65
[5] 2015 (6) SCC 347

deceased, though he was commission agent of fruits and coconuts. The notional income has rightly been taken by the Tribunal considering that he was a labourer working in an unorganised sector, whose income may not be less than the minimum wages. In the light of the ratio laid down by the Apex Court in *Ramesh Singh v. Satbir Singh*[6], *New India Assurance Company Ltd. v. Smt. Shanti Pathak*[7], *Oriental Insurance Co. Ltd. v. Syed Ibrahim*[8], N*ew India Assurance Co. Ltd., v. Kalpana (Smt)*[9]*,* a decision of High Court of Karnataka at Bangalore in S*ri Appayachari v.K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*[10] and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahara*[11]*,* the notional income of a labourer can be taken into consideration as Rs.3,000/- per month.

14. Therefore, the annual income of the deceased in this case is taken as Rs.3000/- x 12 = Rs.36,000/-. After deducting 1/3rd, the contribution to the family of the deceased comes to Rs.24,000/-. The contention of the insurer is that in Sarala Verma, 50% of the income for bachelor has to be deducted towards his personal expenses, after deducting that amount, the loss of dependency has to be calculated. In this case, the Tribunal has deducted 1/3rd towards personal expenses of the deceased.

15. If ratio in Sarala Verma is applied, 50% has to be deducted instead of 1/3rd towards personal expenditure, as this is a case of bachelor. This is an advantage to the insurer. If the age of deceased is taken, it is advantage to the claimants. Therefore, I am of the view that it is not necessary to disturb the findings of the tribunal on quantum of

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[6] MANU/SC/7089/2008
[7] MANU/SC/7776/2007
[8] MANU/SC/7915/2007
[9] (2007) 3 SCC 538
[10] MANU/KA/3721/2013
[11] MANU/WB/0139/2015

compensation as they is no much difference in the quantum of compensation awarded by tribunal.

16. On consideration of the facts and circumstances of this case, it can be safely concluded that there are no valid grounds to interfere with the award passed by the Tribunal in this case.

17. In the result, M.A.C.M.A.No.560 of 2010 filed by the insurance company is dismissed. Cross-objections (SR) No.26513 of 2010 filed by the claimants is also dismissed. The Award passed by the Tribunal in MVOP No.451 of 2006 is confirmed. There shall be no order as to costs. The miscellaneous petition, if any, filed in both the cases, shall stand closed.

G. SHYAM PRASAD, J

Date:28.03.2017.
ccm

HON'BLE SRI JUSTICE G. SHYAM PRASAD

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