HON'BLE Dr.JUSTICE SHAMEEM AKTHER

MACMA No.405 of 2007

JUDGMENT:

Heard learned counsel for the appellants. There is no representation on behalf of the respondent-insurer. The claim against respondent No.1 – owner of the vehicle has been dismissed for default vide order dated 05.07.2016. The dismissal of claim against owner of the vehicle is not a bar to adjudicate this appeal on merits in view of the decision in **Meka Chakra Rao v. Yelubandi Rama Rao**[1]. Hence, this appeal is being disposed of by this judgment.

2. Learned counsel for the appellants contends that the deceased – Somalingam was 48 years old on the date of accident and death. There is specific evidence of P.W.1 in this regard. Ex.A.1, attested copy of FIR dated 10.08.2004, Ex.A.2, attested copy of injury report dated 11.08.2004 and Ex.A.3, attested copy of PME Report dated 11.08.2004 reveal that the deceased was 48 years old on the date of accident and death. The Tribunal had erroneously taken the age of the deceased as 60 years and adopted multiplier "5" and arrived at the compensation. The suitable multiplier for the age 48 is "13". The learned counsel for the appellants further contends that the Tribunal has granted meager compensation on other scores and ultimately prays to enhance the compensation from Rs.1,60,000/- to Rs.3,65,000/-, as prayed for.

3. In spite of ample opportunities, there is no representation on behalf of the respondent-insurer.

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[1] **2001 (1) ALD 453**

4. The evidence of P.W.1 and the documents marked as Ex.A.1, attested copy of FIR dated 10.08.2004 and Ex.A.3, attested copy of PME Report dated 11.08.2004 of the deceased Somalingam reveal the age of the deceased as 48 years at the time of the accident and death. Without taking these documents into consideration and other oral evidence, the Tribunal has taken the age of the deceased as 60 years, which is erroneous. In the circumstances, the age of the deceased can be taken as 48 years. In view of the decision of the Hon'ble Supreme Court in **Sarla Verma and Ors. v. Delhi Transport Co., and another**[2], the suitable multiplier for the age 48 is "13". The Tribunal noted that the deceased was a toddy-tapper and arrived at his monthly earnings at Rs.3,000/- per month, which comes to Rs.36,000/- per annum. By deducting 1/3rd thereof towards personal expenses of the deceased, the Tribunal arrived at the amount of loss of dependency at Rs.24,000/- per annum. The amount of Rs.24,000/- is required to be taken as contribution of the deceased on his family members. By applying multiplier "13" to the said sum, it comes to Rs.3,12,000/-. The Tribunal has rightly granted compensation on other scores, i.e., Rs.10,000/- towards loss of consortium to the 1st petitioner, Rs.15,000/- towards loss of love and affection and Rs.5,000/- towards funeral and transport expenses. Further, the Tribunal granted Rs.10,000/- towards medical expenses for the treatment undergone by the deceased. Therefore, in all, the appellants herein are entitled for compensation of Rs.3,52,000/- with interest at 7.5% per annum. As seen from the oral and documentary evidence on record, there is rash and negligence on the part of the driver of the crime vehicle bearing No.AP.36V.1139 and therefore the finding of the Tribunal cannot be

[2] **(2009) 6 SCC 121**

disturbed with regard to causing death of Somalingam by rash and negligent act. As far as the insurance policy is concerned, the same was valid on the date of the accident and there is no violation of the terms and conditions of the policy. Therefore, the Tribunal has rightly tagged liability against the owner and the insurer of the vehicle.

5. In the result, the appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,60,000/- to Rs.3,52,000/- (Rupees Three Lakhs Fifty Two Thousand only) with interest at 7.5% per annum from the date of filing of claim petition till the date of realisation and costs. The appellants are entitled to withdraw the enhanced compensation in equal share. Other directions of the Tribunal are retained.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

Dr.SHAMEEM AKTHER, J

June 16, 2017
MRR