

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 3148 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the United India Insurance Company Limited, represented by its Divisional Manager, Divisional Office, Kurnool, who is respondent No.2 in M.V.O.P. No.421 of 1995 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool (for short, 'the Tribunal'), aggrieved by the award dated 21.04.2005, whereby the Tribunal determined compensation of Rs.12,00,000/- and granted Rs.6,00,000/- as compensation in favour of the claimants-respondent Nos.1 to 6 herein against the appellant and owner of the crime vehicle-respondent No.7 herein, for the death of M.Nagi Reddy (deceased) in a motor accident occurred on 24.07.1994. Respondent Nos.1 to 6 herein are the mother, wife and daughters of the deceased.

2. Heard the learned Standing Counsel for the appellant-insurer and the learned counsel for respondent Nos.1 to 6 herein-claimants, apart from perusing the material available on record. The appeal against respondent No.7 herein-owner of the crime vehicle is dismissed on 06.01.2012 for default.

3. The parties hereinafter are referred to as they were arrayed before the Tribunal.

4. Learned Standing Counsel for respondent No.2-insurer (appellant) would contend that the Tribunal had not followed the procedure in determining the compensation and erroneously determined Rs.12,00,000/- and granted Rs.6,00,000/-; there are grave laches in

calculating the compensation; the compensation determined and granted by the Tribunal are exorbitant and excessive; and ultimately, prayed to set aside the award passed by the Tribunal.

5. On the other hand, learned counsel for the petitioners-claimants (respondent Nos.1 to 6 herein) would submit that the Tribunal had taken all the facts into consideration; the deceased was a lawyer and aged 43 years; the Tribunal, having taken the income of the deceased as Rs.10,000/- per month, deducting 1/3rd therefrom towards personal living expenses of the deceased and taking the multiplier '15' and taking all other aspects, awarded just and reasonable compensation; there are no circumstances to interfere with the award passed by the Tribunal; ultimately, prayed to dismiss the appeal.

6. In view of the rival contentions of both sides, the point for determination is, whether the award dated 21.04.2006 passed by the Tribunal in M.V.O.P. No.421 of 1995 is sustainable?

7. **POINT:** As per the material available on record, the petitioners are mother, wife and daughters of the deceased. The deceased-M.Nagi Reddy was a practicing advocate. There is record to show that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP M 6165. There is also evidence to believe that the said lorry was insured with respondent No.2-insurer and the insurance policy was valid on the date of occurrence of accident. There is no evidence of violation of terms and conditions of the insurance policy of the crime vehicle. The petitioners, to substantiate their claim of Rs.6,00,000/-, examined P.Ws.1 to 3 and got marked Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-xerox copy of SSLC

certificate, Ex.A.4-income tax receipts two in number and Ex.A.5-photostat copy of certificate issued by the Bar Council of Andhra Pradesh. Respondent No.2-insurer to rebut the same, examined R.Ws.1 and 2 and got marked Ex.B.1-office copy of letter dated 10.11.1995 addressed to respondent No.1-owner, Ex.B.2-certified copy of Motor Vehicles Inspector's report and Ex.B.3-certified copy of the judgment in C.C. No.329 of 1994 on the file of the Judicial Magistrate of First Class, Wanaparthy. The factum of acquittal of R.W.2-driver of the crime vehicle is of no use to respondent No.2-insurer (appellant) to hold that there was no rashness and negligence on the part of the driver of the crime vehicle. There is ample oral and documentary evidence to hold that the driver of the crime vehicle was responsible for occurrence of the accident and there is no violation of insurance policy of the crime vehicle. The Tribunal based on Ex.A.3-xerox copy of SSLC certificate, held that the deceased was born on 01.07.1951 and 43 years old on the date of occurrence of the accident. There is also record to show that the deceased was a practicing lawyer, who enrolled in the year 1978. There is also record to show that the deceased was an income tax payee. Ex.A.4 is the income tax receipt two in number, where the gross income of the deceased was shown as Rs.50,244/-. Though the petitioners contended that the deceased was earning Rs.15,000/- per month, the Tribunal had taken the monthly earnings as Rs.10,000/-, deducted 1/3rd therefrom towards personal living expenses of the deceased and taken multiplier 15 and ultimately, awarded Rs.6,00,000/-, though determined the compensation of Rs.12,00,000/- and tagged liability against respondent Nos.1 and 2, being the owner and insurer of the crime vehicle. No appeal is filed with regard to enhancement

of compensation by the claimants. In the circumstances of the case, there is nothing to take a different view. There is no infirmity in the impugned award. Therefore, the award passed by the Tribunal is liable to be confirmed. Accordingly, this point is answered.

8. In the result, this appeal is dismissed confirming the award and decree dated 21.04.2005 passed by the Tribunal in M.V.O.P. No.42 of 1995. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, shall also stand dismissed.

Date: 26.10.2017
siva



Dr. SHAMEEM AKTHER, J