<u>THE HON'BLE MS. JUSTICE J. UMA DEVI</u>

<u>MACMA NO. 2875 OF 2005</u>
<u>AND</u>
<u>CROSS-OBJECTIONS (SR) NO. 32974 OF 2006</u>

<u>COMMON JUDGMENT</u>:

United India Insurance Company Limited which has been arrayed as respondent No.2 in OP No. 909 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad has come up with this appeal questioning the order passed therein making it liable to pay compensation of Rs.2,25,000/- to the claimants therein.

The claimants in the aforementioned OP have filed cross-objections aggrieved by the quantum of compensation awarded by the Tribunal, and sought for enhancement of compensation.

Both the appeal and the cross-objections are heard together and are being disposed of through this common judgment.

The parties will hereinafter be referred to as they are arrayed in the aforementioned OP.

The facts of the case are briefly stated as under,

That the petitioners are the parents of the deceased Kanchukommula Anil who died in a motor accident which occurred on 18.4.2003 at about 5.00 P.M. due to the rash and negligent driving of tractor bearing No. AP-36-V-5388 and trailer bearing No. AP-36-V-1168 by its driver. It was contended by the petitioners in their claim petition that on 18.4.2003 at about 5.00 P.M. while the deceased Kanchukommula Anil was proceeding towards his house by walk, a tractor bearing No. AP-36-V-5388 and trailer bearing No. AP-36-V-1168 driven by its driver came behind the deceased in a rash and negligent manner with high speed and hit the deceased and the front wheel of the tractor ran over him and that he received multiple facture injuries all over his body and died on the spot. The instantaneous death of the deceased which was caused due to the negligent driving of the tractor bearing No. AP-36-V-5388 and trolley bearing No. AP-36-V-1168 by its driver made his parents to lay the claim petition as against the owner and insurer of the aforementioned tractor for compensation of Rs.3.00 lakhs.

The Tribunal, on appreciation of the oral and documentary evidence, came to the opinion that the death of the deceased Kanchukommula Anil occurred due to the negligent driving of the tractor bearing No. AP-36-V-5388 and trailer bearing No. AP-36-V-1168 which belonged to respondent No.1 and was having valid and subsisting insurance policy as on the date of accident and accordingly awarded compensation of Rs.2.25 lakhs to his parents and ordered for payment of such compensation by the respondents to them.

Having been aggrieved by the aforementioned award passed by the Tribunal in favour of the petitioners granting compensation of Rs.2.25 lakhs in respect of death of their son in the accident dated 18.4.2003, the insurance company came up with this appeal with the main contention that awarding compensation of Rs.2.25 lakhs in respect of death of a minor boy is highly excessive and exorbitant.

The insurance company seems to have not raised any dispute regarding the manner of the accident and it has come up with the plea that the offending tractor and trailer was not having valid and subsisting insurance policy as on the date of accident. But the evidence available in the case record itself shows that the offending vehicle was having valid and subsisting insurance policy with the appellant as on the date of the accident.

The petitioners have also filed cross-objections having not been satisfied with the compensation of Rs.2.25 lakhs awarded to them by the Tribunal. Their main contention is that the Tribunal failed to take note of the fact that the deceased was working as a labourer and earning substantial income, but the Tribunal, without appreciating the said aspect, awarded a meagre compensation amount in respect of death of their son in the accident dated 18.4.2003 who was contributing his entire income earned through labour work for their maintenance.

Since there is no much controversy regarding the manner in which the accident took place and the negligence attributed to the driver of the tractor bearing No. AP-36-V-5388 and trailer bearing No. AP-36-V-1168, there cannot be hesitation for this Court to affirm the finding recorded by the Tribunal on the aspect of negligence.

The only issue which remains for adjudication is whether the compensation awarded to the petitioners by the Tribunal in respect of death of their son Kanchukommula Anil in the accident is just and reasonable.

I have perused the order passed by the Tribunal and also the oral and documentary evidence available in the case record.

Admittedly the petitioners have not adduced any evidence establishing that the deceased was working as a labourer and was getting substantial income. As per Ex.A2-inquest panchanama and Ex.A2-post mortem report, the deceased Kanchukommula Anil in the instant case was of 3-year-old by the date of the accident. The Tribunal has rightly fixed his notional income at Rs.15,000/- per annum considering him as a non-earning member, and by applying multiplier of '15' it awarded compensation of Rs.2.25 lakhs to the petitioners and made the respondents 1 and 2 to pay such compensation jointly and severally.

Though the insurance company has come up with the plea that the compensation awarded by the Tribunal is unfair, and there is no justification in awarding compensation of Rs.2.25 lakhs in respect of death of minor boy who was about 3-year-old, it has not come up with any substantial material to satisfy this Court that the award passed by the Tribunal is illegal. No substantial material is noticed to hold that the order of the Tribunal awarding compensation of Rs.2.25 lakhs suffers from patent factual or legal infirmity.

Hence I am not inclined to allow the appeal filed by the insurance company with which the offending vehicle was insured, and it had the valid and subsisting insurance policy as on the date of accident. I am also not inclined to allow the cross-objections filed by the petitioners for enhancement of the compensation for the reasons recorded above by me.

Since the first petitioner died during the pendency of the OP, the Tribunal held that the second petitioner who is the mother of the deceased alone is entitled to the entire compensation of Rs.2.25 lakhs.

In the light of the aforementioned discussion made by me, there cannot be hesitation for me to order for dismissal of the appeal filed by the insurance company and the cross-objections filed by the petitioners and they are hereby dismissed accordingly. The pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 22.12.2017
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