THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3260 OF 2005
AND
CROSS OBJECTIONS (SR) No.46793 OF 2005

COMMON JUDGMENT:-

M.A.C.M.A.No.3260 of 2005, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the New India Assurance Company Limited, aggrieved by the grant of compensation of Rs.3,75,000/- with proportionate costs and interest at the rate of 6% per annum from the date of petition ie., 28.11.2002 till the date of deposit of the same to the credit of the O.P., as against a claim of Rs.10,00,000/-, to respondent Nos.1 to 3/claimants, by the learned Special Judge for trial of offences under the Scheduled Castes & the Scheduled Tribes (PoA) Act – cum – VI Additional Metropolitan Sessions Judge – cum – XX Additional Chief Judge, City Civil Court, Secunderabad *vide* order, dated 27.12.2004, passed in M.V.O.P.No.237 of 2002 and the claimants preferred Cross Objections (SR) No.46793 of 2005 seeking enhancement of compensation.

2. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties will be hereinafter referred to as per their array before the Tribunal.

3. Learned Standing Counsel for the New India Assurance Company Limited would contend that the subject accident occurred on 28.09.2002 but the policy of insurance, dated 27.09.2002, was taken with the help of Development Officer and the premium payable to take the policy was deposited on

01.10.2002; that the Tribunal did not consider the same and wrongly held that there was valid insurance on the date of the accident and tagged the liability against the Insurance Company and with regard to the cross objections, he submitted that the Tribunal had taken the appropriate age, applied suitable multiplier and granted just and reasonable compensation; that there are no circumstances to enhance the same and ultimately, prayed to set aside the impugned order and dismiss the cross objections.

4. On the other hand, learned counsel for the claimants filed Cross Objections (SR) No.46793 of 2005 and contended that the Tribunal granted an amount of Rs.3,75,000/- as against a claim of Rs.10,00,000/-, which is meagre; that there is valid insurance on the date of accident; that there is nothing to hold that there was fraud as contended; that the Tribunal rightly held the validity of the policy and tagged the liability against the Insurance Company; that the deceased Mehraj Saiyed was permanent employee in a private organisation and his salary certificate was filed and his employer was also examined, but the Tribunal took the salary of the deceased as Rs.4,080/- per month and awarded the meagre compensation; that the multiplier applied by the Tribunal is also incorrect and ultimately, prayed to enhance the compensation and allow the cross objections.

5. In view of the submissions made by the learned counsel for both sides, the point that arises for determination is:

> ***"1. Whether the policy of insurance was valid on the date of occurrence of the accident? and***

> ***2. Whether the claimants are entitled for enhancement of compensation as prayed?"***

6. **<u>POINT No.1</u>**:- There is record to show that the policy of insurance was obtained on 27.09.2002 in respect of the tipper lorry bearing No.A.P.11-U.9008 (offending lorry). The subject accident occurred on 28.09.2002. Though it is contended by the learned Standing Counsel for the Insurance Company that one Development Officer played fraud and brought the said policy into existence after occurrence of the accident and the premium relating to the said policy was deposited on 01.10.2002, the same is not supported by any evidence. None was examined to substantiate the same. Even the said pleading was not taken in the counter. The Tribunal, while dealing with the subject matter of the claim petition, elaborately dealt with the policy of insurance and held that the tipper lorry bearing No.A.P.11-U.9008 (offending lorry) was insured with the Insurance Company on the date of occurrence of the accident and there are no violations of terms and conditions of the policy and therefore, tagged the liability against the Insurance Company along with the owner of the tipper lorry bearing No.A.P.11-U.9008 (offending lorry). In view of that, there is nothing to take a different view.

7. **<u>POINT No.2</u>**:- The only question is whether the claimants are entitled for enhancement of compensation. As per the evidence on record, the deceased Mehraj Saiyed was 26 years old on the date of the accident. His C.B.S.E. School Certificate – Ex.A-9 was also filed. According to that, he was born on 23.04.1976. Ex.A-13 – Diploma Certificate of the deceased was also filed. There are also certificates to show the educational qualifications of the deceased.

Ex.A-8 is the salary certificate. To prove Ex.A-8, P.W.3 - employer was examined. In Ex.A-8, it is mentioned that the deceased was receiving Rs.6,000/- per month as salary. P.W.3 also stated about the same. Admittedly, the deceased was not working in the Government Department. He is working in a private concern. There is no record to show the Acquittance Register being filed before the Tribunal. Further, the business concern where the deceased was said to be working is not a registered firm or company capable of paying Rs.6,000/- per month towards salary. The accident occurred on 28.09.2002. The paying capabilities and earning capabilities in those days are required to be taken into consideration. The hike in the salary should also be required to be taken into consideration.

8. The Tribunal held that the deceased used to contribute Rs.30,000/- per annum on his family members and after applying multiplier "12", awarded an amount of Rs.3,60,000/- towards loss of earnings. The Tribunal also awarded an amount of Rs.15,000/- towards loss of estate and in all, granted a compensation of Rs.3,75,000/-. The Tribunal ought not to have taken the age of the mother of the deceased and ought to have taken the multiplier for the age of "26" of the deceased. As there would be hike in the salary of the deceased Mehraj Saiyed in future, an amount of Rs.5,000/- per month has to be taken as the total income of the deceased. As the deceased was a bachelor, half of his salary i.e., Rs.2,500/- has to be deducted towards his personal expenses. Then, the loss of earnings comes to Rs.2,500/- per month and Rs.30,000/- per annum. The suitable multiplier for the age of 26 is "17". So the loss of dependency caused to the claimants comes

to Rs.5,10,000/- (i.e., Rs.30,000/- x 17). Further, the claimants are entitled for a sum of Rs.15,000/- towards loss of estate and another Rs.15,000/- towards funeral expenses and in all, the claimants are entitled for a compensation of Rs.5,40,000/- (Rs.5,10,000/- + Rs.15,000/- + Rs.15,000/-) with interest at the rate of 7.5% throughout i.e., from the date of application till the date of realisation. Claimant Nos.1 and 2 are entitled to share the enhanced amount and interest thereon equally. There is no change in the other conditions or directions imposed by the Tribunal. On deposit of the compensation, the claimants are permitted to withdraw the entire amount along with the accrued interest as apportioned above.

9. In the result, M.A.C.M.A.No.3260 of 2005 filed by the New India Assurance Company Limited is dismissed and Cross Objections (SR) No.46793 of 2005 filed by the claimants are partly allowed. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

JUSTICE Dr. SHAMEEM AKTHER

Date : 03.08.2018
AMD

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3260 OF 2005
AND
CROSS OBJECTIONS (SR) No.46793 OF 2005

Date: 03.08.2018

AMD