THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1728 of 2009

JUDGMENT:

This appeal is arising out of the judgment dated 12.12.2008 in MVOP No.213 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal, Warangal.

2. The appellants are claimants who have filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.6,50,000/- against the respondents 1 to 3. The Tribunal, on consideration of the evidence, has partly allowed the claim petition awarding compensation of Rs.2,27,000/- against the respondent No.2-owner of the crime vehicle (Eicher Van bearing No.AP-15W-4745). The claim against respondent No.1(previous owner of the crime vehicle), and respondent No.3 (insurer of the crime vehicle) was dismissed.

3. The appellants-claim petitioners, aggrieved by the dismissal of claim against respondent Nos.1 and 3, have preferred this appeal.

4. Heard the arguments of learned counsel for the appellants, and the learned counsel for the respondents.

5. The contention of the learned counsel for the appellants is that the deceased travelled in the capacity of owner of goods but not as an unauthorized passenger, as such there is coverage of risk of the deceased under the insurance policy and, therefore, the insurer is also liable to pay the compensation.

6. Learned counsel for respondent No.3-insurance company submits that the Tribunal has rightly held that the insurer has no liability. The

deceased travelled in the crime vehicle as un-authorised passenger and there was no proof to show that he travelled as a owner of goods. It is further argued that he was midway passenger and, therefore, the insurer is not liable to pay any compensation.

7. On consideration of the evidence on record, it is obvious that RW.1 has filed Ex.B1 insurance policy issued by respondent No.3-insurance company, which clearly shows that no premium has been collected to cover the risk of non-fare paying passengers. The deceased admittedly travelled in a goods vehicle AP-15W-4745 as a gratuitous passenger. Therefore, there is violation of terms and conditions of insurance policy. Respondent No.3 is not liable to pay any compensation to the claimants.

8. As far as the contention of the learned counsel for the appellants-claimants with regard to the liability of the insurance company is concerned, this Court is of the view that the findings of the Tribunal in this regard does not require any interference as there is no coverage for the risk of the deceased under the insurance policy Ex.B1.

9. As far as the contentions of the learned counsel for the appellants with regard to the quantum of compensation is concerned, the appellants are entitled for enhancement of compensation in the light of the judgment of the Hon' ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi**[1].

10. In the light of the decisions referred in Para 13 of the judgment of the Court below in **Duddela Padmavathi and others v Maddala Srinivasa Rao1**[2] and the Apex Court in **National Insurance**

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[1] (2017) ACJ 2700
[2] 2004 (5) ALD 228

Company Limited v Cholleti Bharatamma[3], a lorry along with the goods itself does not entitle any one to protection under Section 147 of the Motor Vehicle Act and the passengers traveling in goods carriage, whether gratuitous or otherwise are not entitled to any compensation as per the provisions of Section 147 of the Motor Vehicle Act. Since, the deceased traveled and since the deceased person is third party, there is no coverage of Insurance, as the Insurance policy is an Act policy.

11. Therefore, in view of the fore going reasons, on appraisal of evidence on record both oral and documentary, let in by the parties the Tribunal rightly held that the Insurance Company has no liability to pay compensation. There are no ground to interfere with the judgment of the Tribunal, dismissing the claim against the Insurance Company, holding that there is no liability of Insurance Company.

12. The learned counsel for the appellants further submitted that the quantum of compensation awarded by the Tribunal is inadequate for the reason that the application of multiplier with regard to the age of the deceased is worng. The appellants are entitled for enhancement of compensation in respect of loss of earning due to wrong application of multiplier which is 8 for the age of deceased. The Tribunal applied multiplier '8' for the age of the deceased for calculation of loss of earning. But the appropriate multiplier applicable to the age of the deceased as per the decision of the Apex Court in the case between

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[3] 2008 1 Supreme Court Cases 423

Sarla Verma & others v Delhi Transport Corporation and another[4]**,** is '14'. The annual income (as rightly calculated by the Tribunal as Rs.2,000/- after deducting 1/3 towards the personal expenditure of the deceased) of the deceased is Rs.2,000 x 12 = 24,000/-. After application of multiplier '14' the loss of earnings of the deceased comes to Rs.3,36,000/- (Rs..24,000/- x 14 = Rs.3,36,000/-) Therefore, the loss of earnings calculated by the Tribunal at Rs.1,92,000/- is enhanced to Rs.3,36,000/-.

13. It is apt to refer to the recent decision of the Apex Court in **National Insurance Co. Ltd. V Pranay Sethi**[5] and others, wherein, it was held as follows:

> "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years"

14. Taking into consideration the aforementioned decision of the Apex Court, this Court is inclined to grant Rs.40,000/- to the 1st appellant (wife of the deceased) towards loss of consortium, Rs.15,000/- to the appellants towards loss of estate and another Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled for a total compensation of Rs.4,06,000/-.(Rs.3,36,000/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-). The Tribunal awarded interest at the rate of 7.5% per annum on the amount granted as

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[4] (2009) 6 SCC 121

[5] 2017 (6) ALD 170 (SC)

compensation from the date of petition till realization, which is just and reasonable.

15. The findings of the Tribunal in respect of the dismissal of claim against the 3rd respondent is upheld. The respondent No.1 and 2 is liable to pay the compensation amount.

16. **IN THE RESULT,** the appeal is partly allowed, enhancing the Award passed by the Tribunal from Rs.2,27,000/- to Rs.4,06,000/- with interest at 7.5% per annum from the date of petition till realization. The judgment of the Tribunal dismissing the claim against respondent No.1 (previous owner) and respondent No.3 (insurance company) is confirmed. The respondent No.2 (present owner of the crime vehicle) is only liable to pay the compensation.

GUDISEVA SHYAM PRASAD, J

20th September, 2018

JR/KSM

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