THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos.2396 of 2005, 2212 of 2005, 2297 of 2005 and 2318 of 2005

COMMON JUDGMENT:

These appeals are preferred under Section 173 of the Motor Vehicles Act, 1988, by the appellant-National Insurance Company Limited, aggrieved the orders in O.P. No.50 of 1999, 49 of 1999, 134 of 1999 and 135 of 1999, all dated 06.06.2005, passed by the Motor Accidents Claims Tribunal-cum-District Judge, Mahaboobnagar.

2. Heard the learned standing counsel for the appellant/insurance company, the learned counsel for the respective claimants, and perused the record.

3. Learned counsel for the appellant would submit that the subject accident was not caused by the Jeep bearing registration No.AP22C 636, but it was caused by a mini van, and that it is a hit and run case; that the same is mentioned in Ex.B2-inquest panchanama. It is further contended that the vehicle was being plied in violation of the terms and conditions of the policy i.e. owner of the jeep was carrying passengers on hire; that the Tribunal erred in tagging the liability against the appellant-insurance company. It is further contended that the compensation awarded by the Tribunal is excessive, and ultimately, prayed to set aside the impugned orders passed against the appellant-insurance company.

4. On the other hand, the learned counsel for the respondents-claimants would submit that the Tribunal had rightly assessed the compensation and awarded the same; that the death of the deceased persons was caused in an accident occurred due to rash and negligent driving of driver of the offending jeep; that it is not a case of hit and run; that there is no record to substantiate the same; that there are no violations of the conditions of the

insurance policy and the Tribunal rightly awarded the compensation, and ultimately prayed to dismiss the appeals.

5. In view of the submissions made by both the sides, the points that arise for consideration are –

i) whether the compensation granted by the Tribunal in the subject claim petitions is excessive ?

ii) Whether the owner and driver of the offending jeep bearing registration No.AP22C 636 violated the terms and conditions of Ex.B1-insurance policy ? &

iii) whether it is a hit and run case, as contended by the appellant-insurance company ?

6. (a) O.P. No.50 of 1999 was filed by the claimants claiming compensation of Rs.5,00,000/- for the death of one Smt. B.Vijayamma in the subject accident. Vide impugned order in MACMA No.2396 of 2005, the Tribunal granted compensation of Rs.3,89,000/- against the owner and insurer jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation.

(b) O.P. No.49 of 1999 was filed by the claimants claiming compensation of Rs.8,00,000/- for the death of one Smt.T.Jayamma in the subject accident. Vide impugned order in MACMA No.2212 of 2005, the Tribunal granted compensation of Rs.4,14,000/- against the owner and insurer jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation.

(c) O.P. No.134 of 1999 was filed by the claimants claiming compensation of Rs.1,00,000/- for the death of one Smt.Ademma in the subject accident. Vide impugned order in MACMA No.2297 of 2005, the Tribunal granted compensation of Rs.1,00,000/- as claimed, against the owner and insurer jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation.

(d) O.P. No.135 of 1999 was filed by the claimant claiming compensation of Rs.1,00,000/- for the death of one Smt.Gangamma in the subject accident. Vide impugned order in MACMA No.2318 of 2005, the Tribunal granted compensation of Rs.1,00,000/- as claimed, against the owner and insurer jointly and severally with interest @ 9% per annum from the date of petition till the date of realisation.

7. While dealing with the subject matter of the claim petitions, the Tribunal had taken the correct age, income and other factors into consideration, and awarded compensation as stated above. There is justification in awarding the respective amounts and there are no circumstances to interfere with the quantum of compensation awarded by the Tribunal.

8. As per the oral and documentary evidence placed on record, the subject deaths in all the above claim petitions were caused in an accident occurred on 02.11.1995 due to rash and negligent driving of driver of jeep bearing registration No.AP22C 636. R.W.1, an official of insurance company, deposed that it is a case of hit and run and one mini van dashed the jeep resulting in deaths of the deceased in the incident. He is not an eye-witness to the occurrence of the accident. Much reliance has been placed on Ex.B2-inquest panchanama. The said document is prepared only as a part of investigation at preliminary stage. Ultimately, police laid charge sheet against the driver of the offending jeep bearing registration No.AP22C 636. There is specific mention therein about the rashness and negligent on the part of the driver of the offending jeep bearing registration No.AP22C 636. There is also oral evidence adduced on behalf of the claimants viz. P.W.2 in the claim petitions, whose name is found in the charge sheet as eye-witness, to the effect that the subject accident was occurred due to rash and negligent driving of driver of the offending jeep. There is no evidence to hold that it is a hit and run case. The Tribunal rightly held that the subject accident was caused due to

rash and negligent driving of driver of the offending jeep. There is no infirmity. There is nothing to take a different view.

9. While dealing with the subject matter of the claim petitions, the Tribunal held that there was valid insurance as on the date of the accident and accordingly tagged liability against the appellant-insurance company. R.W.1 simply deposed that the driver and owner of the offending violated the conditions of Ex.B1-copy of insurance policy. He did not state what are the violations. When there is valid insurance as on the date of the accident and when there is no record to substantiate that the owner or driver of the vehicle violated the terms and conditions of the policy, there is nothing wrong on the part of the Tribunal in tagging the liability against the appellant-insurance company along with owner of the offending vehicle.

10. It is evident from the record that the Tribunal granted interest @ 9% per annum on the compensation amounts awarded in the claim petitions. Learned counsel for the appellant-insurance company would contend that it is excessive. On this aspect, it is apt to refer to a decision in ***Dharampal v. State Road Transport Corporation***[1], *wherein* the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation. There are number of other citations wherein interest was awarded @ 7.5% per annum on the amount awarded as compensation. In view of the same, awarding interest @ 9% per annum on the amount awarded as compensation by the Tribunal, is held excessive, and rate of interest awarded on the compensation amounts is reduced to 7.5% per annum from the date of petition till the date of realization.

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[1] MANU SC 7680 2008

11. Accordingly, the appeals are partly allowed only to the extent of reducing the rate of interest 9% per annum to 7.5% per annum on the amount granted as compensation from the date of petition till the date of deposit. The other terms in the orders under challenge remain unaltered. There is no order as to costs of the appeals.

Miscellaneous Petitions pending, if any, in the appeals shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

03.07.2018
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COMMON JUDGMENT
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