THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1056 of 2007 & 5028 of 2008

COMMON JUDGMENT:-

Since the facts of the case, issues involved, parties and the Order under challenge in both these appeals are one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the award dated 17.07.2006 passed in O.P.No.945 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Adilabad ('the Tribunal', for brevity), the claimants preferred M.A.C.M.A.No.1056 of 2007 seeking enhancement of compensation and the United India Insurance Company Limited preferred M.A.C.M.A.No.5028 of 2008 seeking to set aside the impugned Award.

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

4. The learned counsel for the appellants in MACMA No.1056 of 2007 and respondents 1 & 2 in MACMA No.5028 of 2008 (claimants) would contend that the Tribunal had granted meagre amount as compensation. The claimants are the mother and sister of the deceased-M.Kumara Swamy. The deceased was working as a lorry driver under the employment of owner of the offending lorry bearing registration No.AP-16-U-1239 and earning Rs.4,000/- per month. But the Tribunal erroneously taken the income of the deceased as Rs.2,000/- per month. The

Tribunal granted meagre amounts under other heads and ultimately prayed to enhance the compensation as claimed.

5. On the other hand, the learned Standing Counsel for the United India Insurance Company Limited representing the appellant in MACMA No.5028 of 2008 and 2nd respondent in MACMA No.1056 of 2007 would submit that the deceased himself was guilty of rash and negligent driving of the offending lorry bearing registration No.AP-16-U-1239 and for his death. The claimants are not entitled for compensation. The Tribunal erroneously granted an amount of Rs.2,09,000/- towards compensation with interest @ 7.5% per annum from the date of petition and ultimately prayed to set aside the impugned order.

6. In view of the above rival contentions, the points that arise for consideration in both these appeals are as follows:-

> 1. Whether the impugned order is liable to be set aside against the insurer of the offending vehicle bearing registration No.AP-16-U-1239 (United India Insurance Company Limited-appellant in MACMA No.5028 of 2008 and 2nd respondent in MACMA No.1056 of 2007)?
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> 2. Whether the Tribunal is justified in granting an amount of Rs.2,09,000/- towards compensation with interest @ 7.5% per annum from the date of petition in favour of the claimants, or it is liable to be enhanced?

Point No.1:-

7. It is not in dispute that the deceased-M.Kumara Swamy, driver of the offending lorry bearing registration No.AP-16-U-1239, died in a motor accident occurred on 05.05.2002 on the spot in the course of his employment under the owner of the offending lorry, when the said lorry turned turtle at the outskirts of Kothur village. The Tribunal, while answering the issue No.3

framed by it, i.e., whether the claimants are entitled for compensation and if so, to what amount and from whom, held that since the deceased died in the subject accident in the course of his employment under the owner of the offending lorry, the claimants are entitled for compensation by invoking the provision of Section 167 of the Motor Vehicles Act, 1988 ('the Act', for brevity) and that there was valid coverage of insurance for the crime lorry as on the date of accident and that the insurer of the offending lorry has to indemnify the liability of the insured. The findings of the Tribunal on this aspect are based on evidence and record and in accordance with Section 167 of the Act. There is no infirmity in the same and there is nothing to take a different view.

Point No.2:-

The Tribunal, basing on the oral evidence of P.W.1 and the documentary evidence under Ex.A.7, took the monthly income of the deceased as Rs.2,000/-, deducted ½ of it towards personal expenses of the deceased since the deceased was a bachelor and by applying multiplier '17', awarded an amount of Rs.2,04,000/- towards loss of dependency. The Tribunal also awarded an amount of Rs.5,000/- to the claimants towards funeral expenses. In all, the Tribunal granted an amount of Rs.2,09,000/- as compensation with interest @ 7.5% per annum from the date of petition and apportioned the same between the claimants. The Tribunal ought to have taken into consideration the future hike in the salary of the deceased, since the deceased was only 25 years old as on the date of subject accident. In the facts and circumstances of the case, this Court deems it appropriate to take the monthly salary of the deceased as Rs.2,500/- per month, i.e., Rs.30,000/- per annum. Since the deceased is a bachelor, ½ of it needs to be deducted. So, the annual loss of dependency would come to Rs.15,000/- (Rs.30,000/- minus ½). As per the judgment of the Apex court in case between Sarla Verma v. Delhi Transport Corporation[1], the appropriate multiplier applicable to the age of the deceased (25 years) is '18'. Thus, the total loss of dependency would come to Rs.2,70,000/- (Rs.15,000/- x 18). This Court also deems it appropriate to grant an amount of Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of estate, in favour of the claimants. Thus, the claimants are entitled for a total compensation of Rs.3,00,000/- (Rs.2,70,000/- + Rs.15,000/- + Rs.15,000/-). The Tribunal awarded interest @ 7.5% per annum on the amount granted as compensation from the date of petition, which is just and reasonable.

10. Accordingly, M.A.C.M.A.No.1056 of 2007 filed by the claimants is allowed in part, modifying the Order, dated 17.07.2006, passed in O.P.No.945 of 2002 by the Tribunal, enhancing the compensation from Rs.2,09,000/- to Rs.3,00,000/- with interest @ 7.5% per annum from the date of petition till realisation. The other terms of the Order under challenge remain unaltered. On deposit of the compensation, the claimants are permitted to withdraw the entire amount with interest accrued thereon. The claimants are entitled for equal

[1] AIR 2009 SC 3104

shares in the enhanced compensation. Consequently, M.A.C.M.A.No.5028 of 2008 filed by the Insurance Company is dismissed. No costs.

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

Dr. SHAMEEM AKTHER, J

02nd August, 2018
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