

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.3435 OF 2005 & 1612 OF 2006

COMMON JUDGMENT:

Since the facts of the case, issues involved and the accident in both these appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. M.A.C.M.A.No.3435 of 2005, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the grant of compensation of Rs.1,60,000/- with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.2,00,000/- by the learned Chairman, Motor Accident Claims Tribunal – cum – II Additional District Judge, Guntur (for short, “the Tribunal”) *vide* order, dated 22.07.2005, passed in M.V.O.P.No.714 of 2000. Challenging the very same order, the New India Assurance Company Limited filed M.A.C.M.A.No.1612 of 2006.

3. Heard the learned counsel for both sides and perused the record.

4. The parties are referred to as arrayed before the Tribunal.

5. Learned counsel for the claimants would contend that the deceased Katta China Shouri was a coolie and was earning Rs.70/- to Rs.80/- per day and he was aged 25 years at the time of his death; that the Tribunal did not apply the correct multiplier and granted lesser amount towards loss of dependency; that there is

ample evidence on record to show that the deceased Katta China Shouri was a coolie on the Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270 and therefore, the Tribunal rightly granted compensation against the owner and insurer of the offending Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270 jointly and severally; that there is no infirmity in the impugned order with regard to tagging liability against the Insurance Company and ultimately, prayed to enhance the compensation.

6. On the other hand, learned Standing Counsel for the New India Assurance Company Limited appearing for respondent No.2 would contend that the deceased Katta China Shouri was an unauthorised passenger on the Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270; that there is no evidence that he was a coolie and further, Ex.B-1 - policy of insurance covers the risk of the driver of Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270 and there is no coverage of risk of the coolie; that the deceased Katta China Shouri, being a gratuitous passenger on the offending Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270, is not entitled for compensation from respondent No.2/Insurance Company; that the Tribunal erroneously fixed the liability against respondent No.2 and ultimately, prayed to set aside the impugned order.

7. In view of the submissions made by the learned counsel on both sides, the points that arise for determination are:

“1. Whether the claimants are entitled for enhancement of compensation?”

- 2. Whether the order, dated 22.07.2005, passed in M.V.O.P.No.714 of 2000 against respondent No.2/Insurance Company is liable to be set aside? and**
3. To what relief?"

8. **POINT No.1:-** There is no dispute with regard to the death of the deceased Katta China Shouri in a motor vehicle accident that occurred on 05.05.2000 due to the rash and negligent driving of the driver of Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270. The dispute is with regard to enhancement of compensation and coverage of risk of the deceased Katta China Shouri under the policy of insurance of the offending Tractor bearing No.AP-7U-5269 and Tractor bearing No.AP-7U-5270.

9. To substantiate the claim of the claimants, P.Ws.1 and 2 were examined and Exs.A-1 to A-5 were marked. On behalf of respondent No.2/Insurance Company, R.Ws.1 and 2 were examined and Exs.B-1 to B-7 were marked. The Tribunal, while dealing with the subject matter, relied on the evidence of P.W.1 and criminal case records including Ex.A-2 – certified copy of Inquest Report and Ex.A-3 – certified copy of Post Mortem Certificate, took the age of the deceased Katta China Shouri as 25 years. The Tribunal further held that the deceased Katta China Shouri was an agricultural labourer, took his annual income as Rs.15,000/- and after deducting 1/3rd thereof towards his personal expenses, took the annual contribution of the deceased Katta China Shouri as Rs.10,000/-, applied multiplier “15” and assessed Rs.1,50,000/- payable towards loss of dependency. The Tribunal took the cost of living of those days into consideration and rightly granted 9% interest on the total compensation awarded. In view of

that, it cannot be held that the Tribunal did not grant just compensation towards loss of dependency. Further, the Tribunal granted Rs.5,000/- towards funeral expenses and another Rs.5,000/- towards consortium. On these two heads, the Tribunal granted lesser compensation. In the circumstances of the case, as the deceased Katta China Shouri was 25 years old and claimant No.1, being his wife, apart from the compensation awarded by the Tribunal, she is entitled for a sum of Rs.20,000/- towards loss of consortium, a sum of Rs.10,000/- towards funeral expenses and another Rs.10,000/- towards loss of estate. In all, claimant No.1 is entitled for a sum of Rs.40,000/- apart from the compensation awarded by the Tribunal. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,60,000/- to Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of application till the date of realisation on the enhanced amount of compensation.

10. **POINT Nos.2 & 3:-** As per the evidence placed on record, the offending vehicle is Tractor bearing No.AP-7U-5269 and Trailor bearing No.AP-7U-5270. Ex.B-1 is the copy of policy of insurance. It does not disclose the coverage of risk of coolies travelling by the said vehicle. Under Ex.A-1 – certified copy of F.I.R and Ex.A-2 – Inquest Report, there is no mention that the deceased Katta China Shouri was a coolie engaged by the owner to load and unload the offending vehicle. The submissions made on behalf of the claimants that the deceased Katta China Shouri was a coolie engaged by the owner is without any substance. It appears that it is invented for the purpose of this case. There is no legally

acceptable evidence to substantiate the same. It is appropriate to refer to a decision reported in **New India Assurance Company Limited v. Asha Rani and others**¹, wherein the deceased therein travelled in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In a decision reported in **M/s. National Insurance Company Limited v. Baljith Kaur and others**², it is held that gratuitous passengers travelling in a goods vehicle are not entitled for compensation from the Insurance Company. The subject vehicle is meant for agricultural purpose. It is not meant for transportation of passengers and in view of that, no liability can be tagged to the Insurance Company. The Tribunal erroneously granted the compensation against respondent No.2/Insurance Company and the same is liable to be set aside.

11. In the result, M.A.C.M.A.No.3435 of 2005 filed by the claimants is allowed modifying the order, dated 22.07.2005, passed in M.V.O.P.No.714 of 2000 by the Tribunal, enhancing the compensation from Rs.1,60,000/- to Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of application till the date of realisation on the enhanced amount of compensation. Claimant No.1, who is the wife of the deceased Katta China Shouri, is entitled to the enhanced compensation and interest thereon. On deposit of the compensation, the appellants/claimants are permitted to withdraw the entire amount along with the accrued interest. M.A.C.M.A.No.1612 of 2006 filed by respondent No.2/Insurance Company is allowed, setting aside the order, dated

¹ 2003(2) SCC 223

² [Manu SC 009 2004]

22.07.2005, passed in M.V.O.P.No.714 of 2000 by the Tribunal insofar as tagging the liability against respondent No.2/Insurance Company. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 12.09.2018
AMD



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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