THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

<u>M.A.C.M.A.Nos.851 of 2008 & 985 of 2012</u>

<u>COMMON JUDGMENT:</u>

M.A.C.M.A.No.851 of 2008, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the National Insurance Company Limited, aggrieved by the grant of compensation of Rs.5,95,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, as against a claim of Rs.10,00,000/-, to respondent Nos.1 to 3/claimants, by the learned IV Additional Metropolitan Sessions Judge – cum – XVIII Additional Chief Judge, Hyderabad *vide* order, dated 16.11.2007, passed in O.P.No.1229 of 2005. Challenging the very same order, the claimants filed M.A.C.M.A.No.985 of 2012 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 National Insurance Company Limited would contend that though there was no payment of additional premium to cover the risk of the passengers travelling in the Maruthi Zen car bearing No.AP-36-K-5723 (offending vehicle), the Tribunal erroneously tagged the liability to the Insurance Company; that the Tribunal had granted excess compensation to the claimants; that there was no legally acceptable evidence to believe the monthly earnings of the deceased Thatikonda Sampath Kumar as Rs.5,000/-; that under

Ex.B-1 – copy of insurance policy, there was no coverage of risk of the passengers travelling in the offending vehicle and hence, prays to set aside the impugned order.

4. On the other hand, learned counsel for the claimants would contend that the Tribunal is justified in tagging the liability against the Insurance Company as the policy of insurance was a comprehensive policy; that there are Exs.A-6 to A-13 showing the business of the deceased Thatikonda Sampath Kumar; that the Tribunal took only Rs.5,000/- as monthly income of the deceased and did not take any hike in the income; that in view of the decisions of the Apex Court, the Tribunal ought to have taken the age of the deceased instead of taking the age of the mother for assessing the compensation; that the Tribunal had not granted just amounts on different heads and ultimately, prayed to enhance the compensation.

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

> ***"1. Whether there was coverage of risk of the deceased Thatikonda Sampath Kumar travelling by the car bearing No.AP-36-K-5723 with the Insurance Company? and***
>
> ***2. Whether the compensation awarded is liable to be reduced or enhanced as contended by the learned counsel on both sides?"***

6. **<u>POINT No.1</u>**:- There is no dispute with regard to the deceased Thatikonda Sampath Kumar travelling by the offending car bearing No.AP-36-K-5723 on the intervening night of 25/26.07.2004. Further, there is no much dispute with regard to the driving of the said car by its driver in a rash and negligent

manner and causing accident and the deceased receiving injuries in that accident and succumbed to the injuries on 30.07.2004. There is ample evidence to substantiate the same. The Tribunal rightly held the rashness and negligence on the part of the driver of the car in causing the death of the deceased Thatikonda Sampath Kumar.

7. Ex.B-1 is the copy of policy of insurance. Under Ex.B-1, an amount of Rs.500/- was paid to cover the risk of third parties and the total amount paid under the policy was Rs.8,553/- under different heads. Ex.B-1 establishes the coverage of risk of the persons travelling by the offending car. There is nothing wrong on the part of the Tribunal in tagging the liability against the Insurance Company. Further, it is also apt to state that none of the employees of the Insurance Company were examined to deny the liability on the part of the Insurance Company. Under these circumstances, it can be held that there was valid insurance covering the risk of the deceased Thatikonda Sampath Kumar.

8. **POINT No.2**:- The claimants, who are the parents and sister of the deceased Thatikonda Sampath, have filed number of documents to show the occupation of the deceased. As per the evidence and the documents produced before the Tribunal, the deceased was 26 years old and an unmarried person. The Tribunal took the age of the mother of the deceased as 47 years and applied multiplier "13". It is appropriate to refer to a decision reported in **Munnalal Jain and another v. Vipin Kumar Sharma and others**[1]. In view of the said decision, the age of the deceased

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[1] 2015 ACJ 1985

is required to be taken into consideration to apply the suitable multiplier. As per **Sarla Verma v. Delhi Transport Corporation**[2]'s case, the suitable multiplier for the age of 26 is "17". As per the oral and documentary evidence i.e., Exs.A-10 to A-12 – Auditors' reports, Exs.A-13 and A-14 – acknowledgments from Commercial Tax Department, the deceased was doing business in partnership. Ex.A-7 is the business lease deed. P.W.3 – Tax Consultant of the deceased Thatikonda Sampath Kumar also deposed about the nature of business of the deceased. There are also other documents to show that the deceased got Rs.41,000/-, Rs.62,000/- and Rs.1,06,000/- as profits in those years. The documents placed on record also reveal that the deceased along with the partners was running a garments shop under the name and style of "M/s.Sri Gayathri Fashions" at Nallakunta, Hyderabad. Having considered the partnership business and other documents on record, the Tribunal took the annual income of the deceased as Rs.60,000/-. Taking into consideration the age of the deceased, 40% hike in future proceedings is required to be taken into consideration. Considering the totality of the circumstances including the hike, the annual income of the deceased can be taken as Rs.80,000/-. As the deceased was a bachelor, half of the income is liable to be deducted towards his personal expenses and the remaining half is taken as contribution on the dependants of the deceased, who are his parents and sister. Therefore, by applying the multiplier "17" for the age of "26", the loss of dependency payable comes to Rs.6,80,000/-. The claimants are also entitled for Rs.15,000/- towards loss of estate and another

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[2] AIR 2009 SC 3104

Rs.15,000/- towards funeral expenses. Ex.A-9 is the bunch of medical bills. The deceased was alive for five days after the accident. The Tribunal, considering the same, granted an amount of Rs.75,000/- and the same is supported by the medical bills. Hence, the claimants are entitled for a sum of Rs.75,000/- towards medical bills. In all, the claimants are entitled for a sum of Rs.7,85,000/- (Rupees seven lakhs eighty five thousand only).

9. Accordingly, M.A.C.M.A.No.851 of 2008 is dismissed and M.A.C.M.A.No.985 of 2012 is allowed in part modifying the order, dated 16.11.2007, passed in O.P.No.1229 of 2005 by the Tribunal, enhancing the compensation from Rs.5,95,000/- to Rs.7,85,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation. Claimant Nos.1 and 2, who are the parents of the deceased, are entitled to share the enhanced compensation and interest thereon equally. There is no change in the other conditions or directions imposed by the Tribunal. On deposit of the compensation, the appellants/claimants are permitted to withdraw the entire amount along with the accrued interest. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 13.08.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

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