

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.367 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants-claimants aggrieved by the common order dated 26.07.2004 to the extent it pertains to O.P.No.656 of 1996 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Mahabubnagar (for short 'the Tribunal').

2. Heard the learned counsel for appellants-claimants, the learned Standing Counsel for the respondent No.2-Insurance Company and perused the record. The claim against respondent No.1 was dismissed for default on 02.01.2012.

3. Learned counsel for the appellants-claimants would contend that the Tribunal had taken wrong multiplier and had not granted adequate compensation towards loss of consortium, etc. He also contended that the deceased-Dasharatham was a cooli in the offending lorry. The Tribunal had not considered the said aspect in spite of ample evidence on record and ultimately, prayed to enhance the compensation and also fasten the liability against the respondent-Insurance company.

4. On the other hand, learned Standing Counsel appearing for the respondent-Insurance company would contend that the Tribunal had rightly assessed the compensation on different heads and granted just and reasonable compensation. There are no circumstances to enhance the compensation. He further contended that the deceased was a gratuitous passenger in the offending lorry. The Tribunal had

dealt the same elaborately and recorded the finding to that effect. There are no circumstances to vary the order of the Tribunal and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:-

1. Whether the appellants-claimants are entitled for enhancement of compensation?
2. Whether the respondent-Insurance Company is liable to pay the compensation to the claimants along with the owner of the offending vehicle?

6. POINT No.1:- There is no dispute with regard to the death of the deceased-Dasharatham in a road accident that occurred on 15.06.1995 due to the rash and negligent driving of the driver of lorry bearing No.AP 11T 6677.

7. While dealing with the subject matter of the claim, the Tribunal held that the deceased was 45 years old and took his monthly income as Rs.1,500/-, deducted 1/3<sup>rd</sup> thereof towards his personal expenses, applied multiplier '13' and awarded Rs.1,30,000/- towards loss of earnings. The Tribunal also granted Rs.10,000/- towards loss of consortium, Rs.2,000/ towards loss of estate and another Rs.2,000/- for funeral expenses. In total, the Tribunal granted compensation of Rs.1,44,000/-. In view of the decisions rendered in those days, the Tribunal rightly took the multiplier and income of the deceased. As the accident occurred on 15.06.1995, the earning capability of the deceased, etc., are taken into consideration for assessing the above compensation payable to the claimants. Therefore, there is justification in granting the compensation of Rs.1,30,000/- towards

loss of earnings/dependency. The Tribunal was not justified in granting Rs.10,000/- towards loss of consortium and Rs.4,000/- towards funeral expenses and loss of estate. Therefore, Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and another Rs.10,000/- towards funeral expenses are granted. Point No.1 is answered accordingly.

8. POINT No.2 :- It is contended that the deceased was a cooli in the offending lorry. As per the evidence of P.W.1, he is not an eye witness to the occurrence of accident. P.W.2 was examined to substantiate that the deceased was a cooli engaged on a lorry to load and unload the sand. As per Ex.A1-FIR, the deceased was a passenger travelling in the offending lorry bearing No.AP 11T 6677 and succumbed to the injuries in the accident occurred on 15.06.1995. The evidence of P.W.2 shows that there were 20 or 25 passengers travelling in the lorry. They were sitting on the sand load. Generally, 20 to 25 persons would not be engaged for loading and unloading in any vehicle. The evidence of P.W.2 is inconsistent with Ex.A1-FIR. While dealing with this issue, the Tribunal had elaborately dealt with the evidence on record.

9. It is apt to refer to the decisions of the Hon'ble Supreme Court in *New India Assurance Company Limited v. Asha Rani and others*<sup>1</sup> and *M/s.National Insurance Company Limited vs. Baljit Kaur and others*<sup>2</sup>, wherein it is held that the insurer of the offending vehicle is not liable to pay any compensation to the claimant, who is gratuitous passenger in a goods vehicle and the owner alone is liable to pay the compensation. In view of the said decisions, as the

---

<sup>1</sup> 2003(2) SCC 223

<sup>2</sup> AIR 2004 SC 1340

offending vehicle is a goods vehicle and as the deceased was a gratuitous passenger, the Tribunal has rightly directed the owner of the offending vehicle to pay the compensation. Point No.2 is answered accordingly.

10. In the result, the appeal is partly allowed modifying the order, dated 26.07.2004, passed by the Tribunal in O.P.No.656 of 1996 enhancing the compensation from Rs.1,44,000/- to Rs.1,65,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. The other terms of the order under challenge remain unaltered. On such deposit, the appellants-claimants are permitted to withdraw the entire amount along with interest accrued thereon.

The Miscellaneous Petitions, if any, pending shall stand closed.  
No costs.

Date: 16.08.2018  
ssp

Dr. SHAMEEM AKTHER, J

