THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2338 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant/United India Insurance Company Limited, challenging the order, dated 18.08.2003, passed in O.P.No.192 of 1999, by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad.

2. Heard the learned counsel for the respondents 1 to 3/claimants and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the appellant-Insurance Company. On earlier occasions also, at the request made by the learned Standing Counsel for the appellant-Insurance Company, the matter was adjourned twice. This appeal is of the year 2005. Hence, this appeal can be disposed of on merits basing on the material on record.

3. The points urged by the appellant-Insurance Company in the grounds of appeal are that the findings of the Tribunal are contrary to the facts and law. There is a head-on collision between two vehicles. The driver of the Jeep bearing registration No.AP-15-V-1414 is exclusively responsible for the occurrence of the accident. Further, the insured-owner of the jeep was not made a party to the claim petition. It amounts to non-joinder of necessary party. There was contributory negligence. Grant of compensation of Rs.4,17,000/- in favour of the respondents 1 to 3/claimants is excessive and ultimately prayed to allow the appeal by setting aside the Order under challenge.

4. On the other hand, the learned counsel for the respondents 1 to 3/claimants would submit that the Tribunal had rightly recorded a finding that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AAR-202, resulting in the death of the deceased-Atheequiddin. The respondents 1 to 3/claimants are the mother, wife and sister respectively of the deceased-Atheequiddin. The Tribunal had rightly assessed and granted compensation. The driver of the jeep and its insurer are not necessary parties. The findings of the Tribunal are based on the evidence on record and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. In view of the points urged by the appellant-Insurance Company in the grounds of appeal and the contentions raised on behalf of the respondents 1 to 3/claimants, the points that arise for consideration in this appeal are as follows:

(1) Whether the subject accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AAR-202?

(2) Whether award of compensation of Rs.4,17,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation by the Tribunal is just and reasonable?

(3) Whether the Order under challenge passed by the Tribunal is liable to be set aside?

<u>Point No.1:-</u>

6. Though the appellant-insurer of the lorry bearing registration No.AAR-202 contended that there was rashness and negligence on the part of the driver of the jeep bearing registration No.AP-15-V-1414, no oral and documentary evidence has been adduced on its behalf to substantiate the same. Only Ex.B.1-Copy of insurance policy was marked on behalf of the appellant-Insurance Company.

On the other hand, there is specific evidence of P.W.2-Yakub Ali Khan to prove that the subject accident occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.AAR-202, which resulted in the death of the deceased. The Tribunal, relying on the oral evidence of P.Ws.1 and 2 and the documentary evidence under Exs.A.1-Copy of the First Information Report, Ex.A.2-True copy of the charge-sheet and Ex.A.4-Certified Copy of the Judgment in C.C.No.122 of 1999, rightly held that subject accident occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.AAR-202. There is noting to take a different view. This point is accordingly answered in favour of the respondents 1 to 3/claimants and against the appellant-Insurance Company.

Point Nos.2 & 3:

7. As far as the assessment, calculation and award of compensation to the respondents 1 to 3/claimants is concerned, the Tribunal took the age of the deceased as 30 years as on the date of accident, monthly income at Rs.2,000/-, i.e., Rs.24,000/- per annum, applied correct multiplier "16.51" and awarded an amount of Rs.3,96,500/- to the respondents 1 to 3/claimants towards loss of dependency. The Tribunal also awarded an amount of Rs.3,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.15,000/- to the 2nd respondent/wife of the deceased towards loss of consortium. In all, the Tribunal granted a compensation of Rs.4,17,000/- to the respondents 1 to 3/claimants with interest at the rate of 9% per annum from the date of petition till the date of realisation. The Tribunal had not deducted 1/3rd of the income

towards personal expenses of the deceased and multiplied total annual income of the deceased with the multiplier '16.51'. In this regard, it is apt to state that future hike in the income of the deceased is required to be taken into consideration, but the same has not been done. Further, the amount of Rs.3,000/- granted for loss of estate, Rs.2,500/- towards funeral expenses and Rs.15,000/- towards loss of consortium, are meagre. In the circumstances, for the death of a person of 30 years who was working as Driver, granting compensation over all at Rs.4,17,000/- is just and reasonable. Grant of said compensation by the Tribunal is based on the evidence on record. There is nothing to take a different view. The points urged by the appellant-Insurance Company do not merit consideration. The appeal is devoid of merit and is liable to be dismissed.

8. In the result, the appeal is dismissed.

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

____

Dr. SHAMEEM AKTHER, J

28th June, 2018
Bvv