THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2478 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 08.03.2007 in O.P.No.1229 of 2004 on the file of the Motor Accident Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company and the learned counsel for respondents-claimants and perused the record.

3. Learned Standing Counsel for the appellant-Insurance Company would contend that though there is a rash and negligent act on the part of the rider of the LML scooter bearing No.DDK-238, the Tribunal erroneously fastened the liability against the driver of the lorry bearing No.AP-02-U-0469. The Tribunal had taken the monthly income of the deceased at Rs.17,500/- believing the evidence of P.W.4, the so-called employer of the deceased and Ex.A1-appointment letter. The Tribunal ought not have fixed the monthly income at Rs.17,500/-, which is excessive. The deceased was aged 38 years at the time of accident, but the Tribunal wrongly applied the multiplier '16' and granted excess compensation and ultimately, prayed to set aside the impugned order.

4. On the other hand, the learned counsel for the respondents-claimants would contend that the deceased was having so many qualifications. There are certificates marked as Exs.A6 to A19, which show his physical fitness, enrichment of knowledge and skills,

etc. Having considered the same, the Tribunal had rightly taken the monthly income of the deceased at Rs.17,500/-, and assessed the compensation and granted the same. The Tribunal had granted meagre compensation towards conventional heads and ultimately, prayed to enhance the same.

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

> 1) Whether the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP-02-U-0469 or whether there was contributory negligence on the part of the rider of the scooter bearing No.DDK-238?
>
> 2) Whether the Tribunal was justified in granting the compensation at Rs.22,49,500/- with interest @ 7.5% per annum?
>
> 3) Whether the impugned order is liable to be set aside?

6. <u>POINT No.1</u>:- The Tribunal relied on the evidence of P.W.1-wife of the deceased and the evidence of P.W.2, who is said to be the eye witness, and held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-02-U-0469. Ex.A23 is the copy of accident complaint. Ex.A24 is the copy of FIR, Ex.A25 is the copy of charge sheet and Ex.A26 is the post-mortem report of the deceased. All these documents clinchingly establish that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-02-U-0469. There is no reason for the investigating officer to prepare false reports of Exs.A23 to A26. The evidence of P.W.2 also clearly establishes that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP-02-U-0469. Under these circumstances, there is justification in the finding of the Tribunal that the driver of the lorry bearing No.AP-02-U-0469 was responsible for

the occurrence of accident and death of the deceased. There is nothing to take a different view. Point No.1 is answered in favour of claimants.

7. POINT Nos.2 and 3:- The Tribunal took into consideration Ex.A1-appointment letter of the deceased dated 03.08.2001 issued by M/s.Quba Software Limited as Business Development Manager and the evidence of P.W.4-Managing Director of the said company, who deposed about the appointment of the deceased just one week before the accident.

8. Ex.A5 is the certificate issued by Indian Air Force, Ex.A6 is the provisional certificate issued by Osmania University, Ex.A7 is the certificate issued by Air Force station Ambala, Ex.A8 is the certificate issued by Air Force Memaura, Ex.A9 is the certificate issued by Training raining command sports control board, Ex.A10 is the certificate issued by Indian Air Force, Ex.A11 is the certificate issued by Copaq Computer Center, Raipur Khurd, Chandigarh. Ex.A12 is the certificate issued by Institute of tourism and future management trends, Chandigarh, Ex.A13 is the certificate issued by Delhi Productivity Council, Ex.A14 is the certificate issued by State Board of Technical education and training, Typewriting English lower, Ex.A15 is the certificate issued by Ham Television Institute, Ex.A16 is the certificate issued by Air Force station, Thuglakabad, New Delhi, Ex.A17 is the certificate issued by Annamalai University for PG Diploma in PM & IR, Ex.A18 is the certificate issued by the Indian Air Force for security training and Ex.A19 is the certificate issued by the Indian Air Force for Diploma in Technology. All these certificates would show that the deceased was a graduate and enriched his knowledge and

skills in sports, etc. Having considered these documents, and taking the age of the deceased as 38, the Tribunal applied the multiplier ‘16’. As per P.W.4-employer, the monthly salary of the deceased at Rs.17,500/- cannot be disbelieved.

9. Learned Standing Counsel contended that as per the decision rendered in *Sarla Verma v. Delhi Transport Corporation’s case*[1], the appropriate multiplier to the age group of the deceased is ‘15’. In view of the decision rendered in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*[2], some hike is required to be taken in the monthly income of the deceased and Rs.70,000/- is required to be awarded towards conventional heads. Considering the totality of the circumstances of the case, when lesser amount was granted towards conventional heads, taking the multiplier ‘16’ instead of ‘15’ cannot be found fault with. Further, the Tribunal rightly granted interest @ 7.5% per annum on the compensation awarded. Viewed from any angle, granting of compensation at Rs.22,49,500/- with interest @ 7.5% per annum is not excessive in view of the fact that the deceased acquired so many qualifications during his lifetime and was an earning member. Point Nos.2 and 3 are answered accordingly.

10. In view of the above discussion, the appeal is dismissed.

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

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Dr. SHAMEEM AKTHER, J

Date: 10.09.2018
ssp

[1] AIR 2009 SC 3104
[2] 2017 (6) ALD 170 (SC)