

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1293 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the Oriental Insurance Company Limited aggrieved by the grant of compensation of Rs.4,76,500/- along with proportionate costs and interest at the rate of 9% per annum from the date of the petition till the date of realisation, as against a claim of Rs.5,00,000/-, to respondent Nos.1 to 5/claimants, by the learned Chairman, Motor Accident Claims Tribunal – cum – District Judge at Nizamabad (for short, “the Tribunal”) *vide* order, dated 04.03.2005, passed in O.P.No.802 of 1999.

2. Heard the submissions of the learned Standing Counsel appearing for the Oriental Insurance Company Limited representing the appellant and the learned counsel for respondent Nos.1 to 5/claimants, and perused the material on record.

3. Learned Standing Counsel for the Oriental Insurance Company Limited representing the appellant would contend that the Tribunal had granted compensation of Rs.4,76,500/- along with proportionate costs and interest at the rate of 9% per annum from the date of the petition till the date of realisation, as against a claim of Rs.5,00,000/-, which is excessive; that the deceased Kethavath Devla was travelling in a tractor bearing No.AP-25/T-4401 and there was no valid insurance to the said tractor and the driver thereof was not having valid driving license; that the deceased Kethavath Devla was only a labourer, but the

Tribunal had taken his income as Rs.2,250/- per month and granted excess compensation; that the deceased Kethavath Devla was an unauthorised passenger and hence, no liability can be fastened against the appellant/Insurance Company; that without there being coverage of insurance, the Tribunal erroneously fastened the liability against the appellant/Insurance Company and ultimately, prayed to set aside the impugned order.

4. On the other hand, learned counsel for respondent Nos.1 to 5/claimants would submit that Ex.A-6 is the xerox copy of driving license held by the driver of tractor bearing No.AP-25/T-4401 and there is valid policy of insurance under Ex.A-5; that there is no rebuttal evidence on the part of the Insurance Company with regard to the policy conditions; that the Tribunal is justified in taking the income of the deceased Kethavath Devla as Rs.2,250/- per month and in granting the compensation of Rs.4,76,500/- along with proportionate costs and interest at the rate of 9% per annum from the date of the petition till the date of realisation, as against a claim of Rs.5,00,000/- and there is nothing to take a different view and ultimately, prayed to dismiss the appeal.

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

“1. Whether the Tribunal is justified in granting the compensation of Rs.4,76,500/- along with proportionate costs and interest at the rate of 9% per annum from the date of the petition till the date of realisation, as against a claim of Rs.5,00,000/-?

2. Whether the Tribunal is justified in fastening the liability against the appellant/Insurance Company? and

3. Whether the order, dated 04.03.2005, passed in O.P.No.802 of 1999 is liable to be set aside against the Insurance Company?"

6. **POINT No.1:-**

There is no dispute that the deceased Kethavath Devla succumbed to injuries suffered by him in a motor accident occurred on 12.06.1999 due to the rash and negligent driving of the driver of tractor bearing No.AP-25/T-4401. The dispute is with regard to the assessment and award of compensation and interest and also tagging the liability against the appellant/Insurance Company.

7. While dealing with the subject matter, the Tribunal had taken the monthly income of the deceased Kethavath Devla as Rs.2,250/-. It is appropriate to refer to a decision in **National Insurance Co. Ltd., Vs. Pranay Sethi and others**¹ wherein the Apex Court held that some hike in the income of the deceased is required to be taken into consideration. Having considered the same, taking the monthly income of the deceased Kethavath Devla as Rs.2,250/- and applying the multiplier "17" for the age of 35 years of the deceased Kethavath Devla, the Tribunal awarded a compensation of Rs.4,59,000/- towards loss of dependency. The Tribunal also awarded an amount of Rs.15,000/- to claimant No.1 towards loss of consortium and an amount of Rs.2,500/- towards funeral expenses. In all, the Tribunal granted compensation of Rs.4,76,500/- along with proportionate costs and interest at the rate of 9% per annum from the date of the petition till the date of

¹ 2017 (6) ALD 170 (SC)

realisation. In the given circumstances, for the death of a person of 35 years old, grant of compensation of Rs.4,76,500/- is justified and there are no circumstances to interfere with the same.

8. As regards the rate of interest, it is apt to refer to the decision of the Apex Court in **Dharampal Vs. State Road Transport Corporation**² wherein the Apex Court awarded interest at the rate of 7.5% per annum on the amount awarded as compensation. In the instant case, the Tribunal granted interest at the rate of 9% per annum, which is excessive.

9. Accordingly, the quantum of compensation of Rs.4,76,500/-, which was awarded by the Tribunal in favour of respondent Nos.1 to 5/claimants is confirmed, but the rate of interest awarded thereon is reduced from 9% per annum to 7.5% per annum.

10. **POINT Nos.2 & 3:-** While dealing with the subject matter of the O.P., the Tribunal, basing on Ex.A-6 – xerox copy of driving licence of the driver of tractor bearing No.AP-25/T-4401, held that there was a valid driving license. Though the Insurance Company contended that there was no coverage of policy of insurance to the labourers travelling by the offending tractor bearing No.AP-25/T-4401, none was examined on behalf of the appellant/Insurance Company to substantiate the same. While dealing with the subject matter, the Tribunal, relying on the evidence of P.Ws.1 and 2 and the criminal case record i.e., Exs.A-1 and A-2, held that the deceased Kethavath Devla was travelling by the offending tractor bearing No.AP-25/T-4401 as a labourer and succumbed to injuries sustained due to the rash and negligent

² MANU SC 7680 2008

driving of the driver of the said tractor. This finding is based on the evidence on record. There is nothing to take a different view.

11. Learned Standing Counsel for the appellant/Insurance Company relied on a judgment, dated 12.06.2012, in MFA No.779/2009 (MV) of the Hon'ble High Court of Karnataka at Bangalore in **The New India Assurance Co. Ltd., vs. Sri Y.Bhemmanna** and a judgment, dated 12.03.2015, in FAO No.7886 of 2014 (O&M) of the Hon'ble High Court of Punjab and Haryana at Chandigarh in **HDFC ERGO General Insurance Company Ltd. Vs. Rahila and others.**

12. In the judgments relied upon by the learned Standing Counsel for the appellant, the deceased therein were coolie and labourer respectively and they succumbed to the injuries suffered by them due to the rash and negligent driving of the drivers of the respective tractors therein, and in such a case, the respective High Courts held that there is no coverage of risk of the passengers travelling in the tractors and absolved the Insurance Company from paying compensation to the claimants therein. Whereas, in the instant case, there is no oral evidence to substantiate that the policy of insurance does not cover the risk of the labourers. As per the evidence on record, the deceased Kethavath Devla was a labourer travelling by offending tractor bearing No.AP-25/T-4401, which met with an accident. Ex.A-5 – xerox copy of insurance policy reveals that the offending tractor was insured with the appellant herein and the policy was valid from 04.11.1998 to 03.11.1999. The subject accident took place on 12.06.1999. So, as on the date of accident, the offending tractor was insured with

the appellant herein and the policy was valid and subsisting. The decisions relied on by the learned counsel for the appellant/Insurance Company have no application to the instant case. The Tribunal rightly decreed the claim petition against the appellant and the owner of the tractor bearing No.AP-25/T-4401 to pay the compensation jointly and severally. There is nothing to take a different view.

13. Accordingly, the quantum of compensation of Rs.4,76,500/-, which was awarded by the Tribunal in favour of respondent Nos.1 to 5/claimants is confirmed, but the rate of interest awarded thereon is reduced from 9% per annum to 7.5% per annum. The other terms of the impugned order remain unaltered.

14. In the result, the appeal is partly allowed. There shall be no order as to costs.

15. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 19.09.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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