THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1083 of 2006 & 3705 of 2008

COMMON JUDGMENT:-

Since the issue involved in these appeals is one and the same, they are being disposed of by this common judgment.

2. Challenging the order dated 31.01.2006 passed in O.P.No.639 of 1993 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar ('the Tribunal', for brevity), the Insurance Company preferred M.A.C.M.A.No.1083 of 2006 seeking to set aside the impugned order and the claimants 1 and 3 preferred M.A.C.M.A.No.3705 of 2008 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties are hereinafter referred to as per their array before the Tribunal.

4. The learned counsel for claimants would contend that the deceased was 28 years old on the date of accident and he was a private employee. The Tribunal had not taken into consideration the gross salary of Rs.2,600/-, but took Rs.1,687/- as monthly salary and awarded meagre compensation. The Tribunal had not granted adequate and just compensation on other heads also. The Tribunal erred in deducting 1/3rd towards personal expenses of the deceased. There are six dependents on the deceased. Therefore, 1/4th has to be deducted towards personal expenses. He also contended that the grant of interest @ 6% per annum is on lower side and ultimately prayed to enhance the compensation.

5. On the other hand, learned counsel for the National Insurance Company would contend that there was no policy of

insurance. R.W.1 clearly and categorically deposed about the same. However, the Tribunal fastened the liability against the National Insurance Company, which is erroneous. He also contended that the assessment and grant of compensation of Rs.2,65,000/- is on higher side and ultimately prayed to set aside the impugned order.

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

1. Whether the Tribunal justified in fastening the liability against the respondent-National Insurance company?

2. Whether the compensation awarded in favour of the claimants is liable to be enhanced/reduced?

7. While dealing with the subject matter of the claim, the Tribunal relied on Ex.A8-certified copy of the order passed in O.P.No.97 of 1994 which pertains to claim which arose from the same accident as in the present case, wherein the claimants therein were granted compensation against the National Insurance Company. While R.W-1-Office Assistant of the National Insurance Company was called upon to produce the policy, it was stated that in spite of their best efforts, it was not traced and it might have been destroyed. When the insurer had not disputed the claim awarded against it in O.P.No.97 of 1994 in respect of the same accident, it is deemed that there was policy of insurance in respect of offending vehicle bearing No.ATT 3541. The Tribunal rightly appreciated the same and fastened the liability against the National Insurance Company.

8. There is no dispute with regard to the death of the deceased in a motor accident that occurred on 04.10.1992 due to

the rash and negligent driving of the lorry bearing No.ATT 3541. As per the evidence placed on record, the deceased was a daily wage earner. To substantiate the same, P.W.3-employer was examined and got marked Ex.A3-salary certificate of the deceased, which shows gross salary of the deceased as Rs.2,087/-. The Tribunal had taken Rs.1,687/- as monthly salary of the deceased and assessed the compensation by deducting 1/3rd thereof towards personal expenses and applied multiplier '17' for the age of the deceased (28 years) and assessed an amount of Rs.2,29,500/- towards loss of dependency.

9. Since the accident occurred in the year 1992 and the O.P. was filed in the year 1993, the gross salary of the deceased can be taken as Rs.2,087/- per month, which comes to Rs.25,044/- per annum. There are six dependents on the deceased. Therefore, 1/4th thereof has to be deducted towards personal expenses of the deceased. After deducting 1/4th thereof towards personal expenses of the deceased, the contribution of deceased to claimants comes to Rs.18,783/- per annum and after applying the multiplier '17', it comes to Rs.3,19,311/- as contribution to his family/claimants. Further, the 1st claimant/wife is entitled for an amount of Rs.25,000/- towards loss of consortium. The appellants-claimants are also entitled for Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. In all, they are entitled for Rs.3,64,311/-, rounded of Rs.3,64,300/-.

10. It is appropriate to mention that the insurer was impleaded in the said O.P. on 05.06.1996 pursuant to the order of this Court. Hence, the Tribunal was justified in directing the insurance company to pay interest on the awarded amount from

05.06.1996 till the date of deposit. As regards the rate of interest, as per settled legal principles, the claimants are entitled to interest @ 7.5% per annum.

11. In the result, M.A.C.M.A.No.3705 of 2008 filed by the claimants is allowed in part, modifying the order, dated 31.01.2006, passed in O.P.No.639 of 1993, by the Tribunal, enhancing the compensation from Rs.2,65,000/- to Rs.3,64,300/- with interest @ 7.5% per annum on the enhanced amount of compensation from 05.06.1996 till the date of deposit. On deposit of the enhanced compensation, the appellants-claimants are permitted to withdraw the same along with the interest accrued thereon. The other terms of the Order under challenge remain unaltered. Consequently, M.A.C.M.A.No.1083 of 2006 filed by the National Insurance Company is dismissed.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. No costs.

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Dr. SHAMEEM AKTHER, J

Date: 10.08.2018
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