THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1653 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the grant of compensation of Rs.68,000/- as against a claim of Rs.1,50,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum - District Judge, Rangareddy District at Saroornagar, Hyderabad (for short, "the Tribunal") *vide* order, dated 28.06.1996, passed in O.P.No.49 of 1993; and also aggrieved by the dismissal of the claim against respondent No.2/the United India Insurance Company Limited.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants and the learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellants/claimants would contend that the deceased Lambadi Devuja was the owner of the goods (vegetables); that there was valid insurance to the lorry bearing No.AP-11-T-3982/offending vehicle; that the Tribunal granted only Rs.68,000/- as against a claim of Rs.1,50,000/-, which is meagre; that the Tribunal erroneously dismissed the claim against respondent No.2 and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel appearing for the United India Insurance Company Limited representing

respondent No.2 would contend that the deceased Lambadi Devuja was travelling in the lorry bearing No.AP-11-T-3982/offending vehicle as a gratuitous passenger; that the deceased is not the owner of the goods and the driver was not having valid license on the date of the accident; that no copy of policy was marked and the Tribunal rightly dismissed the claim against the United India Insurance Company Limited and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both the counsel, the points that fall for determination are:

> ***"1. Whether the appellants/claimants are entitled for enhancement of compensation as prayed for? and***
>
> ***2. Whether respondent No.2/Insurance Company be directed to pay the compensation?"***

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

While dealing with the subject matter of the appeal, the Tribunal held that the deceased was travelling in the lorry bearing No.AP-11-T-3982 and the driver of the lorry drove the lorry in a high speed and in a rash and negligent manner due to which, the deceased received grievous injuries along with other inmates, and succumbed to the injuries. Further, the Tribunal, while assessing the compensation, took the income of the deceased as Rs.600/- per month, deducted 1/3rd thereof towards his personal expenses, took the age of the deceased as "45" years and applied multiplier "10" and rightly assessed and awarded an amount of Rs.48,000/- as compensation payable towards loss of dependency. The Tribunal also awarded an amount of Rs.15,000/- towards loss of estate to the claimants and an amount of Rs.5,000/- towards loss of consortium to claimant No.1 and in all, the Tribunal awarded a compensation of Rs.68,000/-. The date of accident in the instant case is 24.12.1992. So, the capacity to earn in those days is required to be taken into consideration for assessing the compensation. In view of that, there is nothing wrong on the part of the Tribunal in awarding a compensation of Rs.68,000/- with interest at 12% per annum from the date of petition till the date of payment. The assessment and calculation of compensation by the Tribunal is based on evidence on record. Therefore, it cannot be held that the compensation awarded by the Tribunal is meagre. There is no need to interfere with the impugned judgment of the Tribunal.

7. **POINT No.2:-** While dealing with the subject matter, the Tribunal held that there was no proof of policy of insurance of the lorry bearing No.AP-11-T-3982/offending vehicle. The cover note number "13171" is not sufficient to hold that the offending vehicle was insured with respondent No.2/Insurance Company. Admittedly, no policy number was given and the validity of the policy of insurance was also not mentioned in the claim application. Respondent No.1/owner is on record. Nothing prevented the owner of the vehicle to file the policy of insurance before the Tribunal. The Tribunal also held that even if there is a policy of insurance, the validity is to be taken into consideration. Further, the terms and conditions of the insurance policy are also required to be taken into consideration. Though learned counsel for the appellants/claimants contended that the deceased was the owner of the goods and he was travelling with the goods in the offending vehicle, as per the evidence of P.W.1, the deceased was a

vegetable vendor and earning Rs.60-70/- per day. He used to take 4 to 5 vegetable baskets from Pothampally to Hyderabad for sale. This goes to show that the deceased was not the producer of the vegetables. In Ex.P-1 – certified copy of F.I.R. also, there is no mention that the deceased was carrying the load of vegetables in the offending vehicle. The deceased carrying 4 to 5 vegetable baskets along with him for the purpose of sale would not make him the owner of the goods. Even if there is a policy of insurance, it would not cover the risk of the deceased in the instant case. It is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1] where the deceased was travelling in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

8. In view of the facts and circumstances, a direction to pay the compensation to the claimants at the first instance and later, recover the same from respondent No.1/owner of the offending vehicle cannot be given to respondent No.2/Insurance Company. The appeal is devoid of merit on all grounds and is liable to be dismissed.

9. Accordingly, this appeal is dismissed. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 23.07.2018
AMD

[1] 2003(2) SCC 223

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

<u>M.A.C.M.A.No.1653 OF 2005</u>

Date: 23.07.2018

AMD