THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos.1823 OF 2007 AND 4087 OF 2008

COMMON JUDGMENT:

These appeals, under Section 173 of the Motor Vehicles Act, 1988, are filed aggrieved by the order dated 02.12.2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad ('the Tribunal', for brevity) in O.P. No.926 of 2005.

2. The appellant in M.A.C.M.A. No.1823 of 2007 is respondent No.2-insurance company, and the appellants in 4087 of 2008 are claimants, in the O.P. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the claim petition.

3. The claimants filed the Original Petition claiming compensation of Rs.4,00,000/- for the death of one Narsamma in a road accident that occurred on 18.11.2004 due to rash and negligent driving of driver of Auto rickshaw bearing registration No.AP24U 7118. Vide the impugned order, the Tribunal partly allowed the claim petition granting compensation of Rs.2,80,000/- against respondents 1 and 2 in the claim petition jointly and severally, and directed the insurance company to pay the compensation and recover the same from the owner in the same proceedings by executing the Award. Challenging the same, the present appeals are preferred.

4. On 08.06.2018, as there was no representation for both the sides, the matter was directed to be listed to today under the caption 'for orders'. Even today, standing counsel for the insurance company is absent and there is no representation. Since these appeals relate to the year 2007 and 2008, these appeals are being taken up for disposal.

5. Heard the learned counsel for the claimants and perused the record.

6. Learned counsel for the appellants-claimants would submit that the Tribunal had taken wrong multiplier i.e. '11', instead of '13'; that the income of the deceased assessed by the Tribunal at Rs.3,000/- per month is on lower side; that adequate compensation was not granted by the Tribunal on conventional heads as per the decision in Apex Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*[1] and ultimately prayed to enhance the compensation as prayed for.

7. In the grounds of appeal preferred by the insurance company, it is urged that there was violation of the terms and conditions of the policy of insurance; that the Tribunal had erroneously tagged liability on the insurance company without there being any valid policy covering the risk of the inmates of the offending auto rickshaw; that the Tribunal had granted excess compensation on different heads and ultimately prayed

[1] 2017 (6) ALD 170 (SC)

to set aside the impugned order against the insurance company.

8. In view of the above contentions, the points that arise for consideration in these appeals are-

(i) whether the Tribunal is justified in directing the insurance company to pay compensation to the claimants jointly and severally;

(ii) whether the claimants are entitled for enhancement of compensation as prayed for ?

9. POINTS 1 & 2:

It is the case of the claimants that on 18.11.2004, while the deceased Narsamma was travelling in offending Auto bearing registration No.AP24U 7118, the auto turned turtle resulting in her death. It is the case of the insurer that 5 passengers were travelling in the offending auto at the time of the subject accident; that as the number of passengers permitted in an auto is only '3', the driver had violated the terms and conditions of the insurance policy. The contention of the claimants is that to his knowledge, only one claim was filed i.e. by the claimants herein, and that though some of the inmates suffered injuries, they did not file claim petition.

10. There is no dispute with regard to involvement of the offending auto in the subject accident. As per the oral and documentary evidence, it can safely be concluded that the deceased Narsamma died due to rash and negligent driving of the driver of the offending auto.

11. As regards the liability of the insurance company, though the insurance company contended that the driver of the offending vehicle was not having valid driving license to drive the offending vehicle, no official from the R.T.A. was examined to substantiate the same. It is the further contention of the insurance company that the offending auto was over-loaded at the time of the subject accident and hence, it amounts to violation of conditions of the insurance policy. The deceased in this case is a third party. At the most, it can be held as violation of the conditions of the policy. On this aspect, the Tribunal relied on the decision in *National Insurance Company Limited v. Swaran Singh & others*[2], and directed the insurance company to pay the compensation and recover the same from the insured. In the circumstances of the case, the said finding needs no interference by this court.

12. With regard to quantum of compensation, from Ex.A4-certified copy of post-mortem examination report and other criminal case records, it is clear that the deceased was aged 50 years as on the date of the subject accident. As per *Sarla Verma v. Delhi Transport Corporation*[3], the appropriate multiplier for the age of 50 years is '13', but not '11' as taken by the Tribunal. The Tribunal rightly assessed the income of the deceased, being house wife, at Rs.3,000/- per month i.e. Rs.36,000/- per annum. Tribunal rightly held that the income

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[2] 2004 ACJ 1
[3] AIR 2009 SC 3104

is not on the basis of earning capacity, but the capacity of a woman to serve the family. If 1/3rd thereof is deducted towards personal expenses of the deceased, her contribution to the family comes to Rs.2,000/- per month. The loss of dependency comes to Rs.2,000/- x 12 x 13 = Rs.3,12,000/-.

13. As regards the compensation towards conventional heads, the Tribunal granted only Rs.16,000/- towards conventional heads viz. Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and Rs.9,000/- towards loss of consortium. In Pranay Sethi's case (1 supra), the Apex Court held as follows:-

> "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

Relying on the aforementioned decision of the Apex Court, this Court is inclined to grant Rs.40,000/- to the 1st appellant/1st claimant (husband) towards loss of consortium, Rs.15,000/- to the appellants-claimants towards loss of estate and another Rs.15,000/- towards funeral expenses. Thus, the appellants-claimants are entitled for a total compensation of Rs.3,82,000/- (Rupees three lakhs eighty two thousand only) (Rs.3,12,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-).

14. Accordingly, CMA No.4087 of 2008 is allowed in part, modifying the order, dated 02.12.2006 in O.P. No.926 of 2005

passed by the Tribunal, enhancing the compensation from Rs.2,80,000/- to Rs.3,82,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. On deposit of the compensation, the appellants-claimants are permitted to withdraw the entire amount along with the interest accrued thereon as apportioned below.

Appellant No.1 (husband)	:	Rs.1,82,000/-
Appellant No.2 (son)	:	Rs.1,00,000/-
Appellant No.3 (son)	:	Rs.1,00,000/-

The other terms of the Order under challenge remain unaltered.

15. C.M.A. No.1823 of 2007 is, accordingly, dismissed.

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

Dr. SHAMEEM AKTHER, J

19.06.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

COMMON JUDGMENT

IN

M.A.C.M.A. Nos.1823 OF 2007 AND 4087 OF 2008

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