THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1606 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant/the United India Insurance Company Limited, challenging the order, dated 04.05.2004, passed in O.P.No.888 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar ('the Tribunal', for brevity).

2. Heard the learned counsel for both sides and perused the record.

3. The learned Standing Counsel for appellant-Insurance Company would contend that the deceased was travelling in the auto bearing registration No.AP-28-U-2273 by standing by the side of the driver's seat. When the driver of the auto was negotiating a curve, the deceased fell down, suffered injuries and succumbed to the same. There was contributory negligence on the part of the deceased in the occurrence of the subject accident. The Tribunal had not taken the same into consideration. Though the deceased was 26 years old as on the date of accident, the Tribunal applied multiplier '18' instead of '17'. The Tribunal awarded interest @ 9% per annum on the amount granted as compensation from the date of petition till the date of payment. As per the settled legal position, interest @ 7.5% per annum on

the amount granted as compensation is to be awarded and ultimately prayed to reduce the amount of compensation.

4. On the other hand, the learned counsel for the respondents 1 and 2/claimants would contend that the Tribunal had applied the correct multiplier. There was no negligence on the part of the deceased in occurrence of the subject accident. It is the driver of the offending vehicle, who allowed the deceased to travel in the offending vehicle by standing by the side of his seat. Therefore, no amount is liable to be deducted towards contributory negligence. The Tribunal is justified in granting interest @ 9% per annum on the amount granted as compensation from the date of petition till the date of payment and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. In view of the above rival contentions, the points that arise for consideration in this appeal are as follows:-

1. Whether the deceaed-Anjaiah contributed for the occurrence of the subject accident and his death?
2. Whether the Tribunal is justified in granting compensation of Rs.3,85,000/- in favour of the respondents 1 & 2/claimants, by applying multiplier '18' to the age of the deceased?
3. Whether the Tribunal is justified in granting interest @ 9% per annum on the amount granted as compensation, from the date of petition till the date of payment?

<u>Point No.1:-</u>

6. P.W.2-Bikshapathi is an eye-witness to the occurrence of the subject accident. He deposed that while the driver of the offending vehicle was negotiating a curve, the deceased fell down from the offending vehicle and suffered injuries. Immediately the deceased was shifted to Osmania General Hospital, where, he

succumbed to the injuries. He categorically deposed that the deceased was standing by the side of the driver's seat of the auto at the time of occurrence of the subject accident. Nobody is allowed to stand in an auto when it is plying. The driver of the offending vehicle ought not have allowed anybody to stand by the side of his seat while the auto was plying. Standing in an auto when it was plying certainly amount to negligence on the part of the person who was standing, as well as driver of the auto. Had the deceased not been standing in the offending vehicle while it was plying, he would not have fallen down from the offending vehicle and suffered injuries and succumb to the same. In view of the same, the liability between the deceased and the driver of the offending vehicle can be apportioned in the ratio of 25:75 respectively. Hence, it can be held that the deceased contributed to the occurrence of the subject accident to the extent of 25%.

<u>Points 2 & 3:-</u>

7. As per the evidence of P.W.1-wife of the deceased and the criminal case record, the deceased was 26 years old as on the date of accident. The suitable multiplier applicable to the age of the deceased as per the decision of the Apex Court in the case between Sarla Verma v. Delhi Transport Corporation[1] is '17' but not '18', as adopted by the Tribunal. The Tribunal took the monthly income of the deceased as Rs.2,500/-, deducted 1/3rd of it towards personal expenses and by applying multiplier '18', granted an amount of Rs.3,60,000/- towards loss of support to the family. The Tribunal further granted an amount of

---

[1] AIR 2009 SC 3104

Rs.20,000/- to 1st respondnet-wife of the deceased towards loss of consortium, Rs.2,500/- towards funeral expenses and Rs.2,500/- to the 2nd respondent-mother of the deceased towards loss of estate. In all, the Tribunal granted an amount of Rs.3,85,000/- with interest @ 9% per annum from the date of petition to the date of payment.

8. In a recent decision in National Insurance Co. Ltd., Vs. Pranay Sethi and others[2], the Apex Court awarded a sum of Rs.70,000/- under conventional heads. But the Tribunal awarded only Rs.25,000/- under the conventional heads. As already stated, the Tribunal applied multiplier '18', instead of '17' to the age of the deceased, while assessing loss of support to family. Considering the totality of the circumstances, the Tribunal is justified in assessing a total compensation payable at Rs.3,85,000/-. Since it is held that there was 25% contributory negligence on the part of the deceased in occurrence of the subject accident, 25% of the amount is liable to be deducted from the amount assessed as compensation. Thus, the respondents 1 & 2-claimants are entitled for a total compensation of Rs.2,88,750/- rounded to Rs.2,90,000/- (Rs.3,85,000/- minus 25%).

9. The Tribunal granted interest at the rate of 9% per annum on the amount granted as compensation. It is apt to refer to the decision of the Apex Court in Dharampal Vs. State Road Transport Corporation[3], wherein, the Apex Court awarded

[2] 2017 (6) ALD 170 (SC)
[3] MANU SC 7680 2008

interest at the rate of 7.5% per annum on the amount awarded as compensation. There are number of other citations, wherein, interest was awarded at the rate of 7.5% per annum on the amount awarded as compensation. In view of the same, awarding interest at the rate of 9% per annum on the amount awarded as compensation by the Tribunal is held excessive.

10. Accordingly, this appeal is allowed in part, modifying the Order, dated 04.05.2004, passed in O.P.No.888 of 2000 by the Tribunal, reducing the compensation payable to the respondents 1 & 2/claimants from Rs.3,85,000/- to Rs.2,90,000/- with interest @ 7.5% per annum from the date of petition till realisation. The other terms of the Order under challenge remain unaltered. On deposit of the compensation, the respondents 1 & 2/claimants are permitted to withdraw the entire amount with interest.

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

____

Dr. SHAMEEM AKTHER, J

30th July, 2018
Bvv