THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1103 & 1529 of 2005

COMMON JUDGMENT:-

Since the facts of the case, issues involved, parties and the Order under challenge in both these appeals are one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the Order, dated 21.02.2005, passed in O.P.No.912 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad ('the Tribunal', for brevity), the United India Insurance Company Limited preferred M.A.C.M.A.No.1529 of 2005 seeking to set aside the impugned Order and the claimants preferred M.A.C.M.A.No.1103 of 2005 seeking enhancement of compensation.

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

4. The learned counsel for the appellants in MACMA No.1103 of 2005 and respondents 3 to 7 in MACMA No.1529 of 2005 (claimants) would contend that there are five dependants on the deceased. The Tribunal took the monthly income of the deceased at Rs.2,500/- though there is evidence of P.W.1 to the effect that the deceased was earning Rs.5,000/- per month and erroneously deducted 1/3rd towards his personal expenses

instead of 1/4th. The Tribunal had also erroneously adopted multiplier '12', whereas the appropriate multiplier applicable to the age of the deceased is '13' and ultimately prayed to enhance the compensation as claimed.

5. On the other hand, the learned Standing Counsel for the United India Insurance Company Limited representing the appellant in MACMA No.1529 of 2005 and 2nd respondent in MACMA No.1103 of 2005 would submit that the Tribunal had rightly assessed and granted compensation to the claimants. There are no circumstances to enhance the compensation. The policy was an 'act Policy'. The deceased was a gratuitous passenger on the offending vehicle. There is no coverage of risk of the deceased under the insurance policy. The direction given by the Tribunal to the Insurance Company to pay the compensation at the first instance and then recover the same from the owner of the offending vehicle is unsustainable under law and ultimately prayed to set aside the impugned order.

6. In view of the above rival contentions, the points that arise for determination in both these appeals are as follows:-

1. Whether the claimants are entitled for enhancement of compensation?
2. Whether the Insurance Company be absolved from its liability to pay compensation to the claimants.

7. It is evident from the record that the deceased-Mohan Reddy was aged 48 years as on the date of accident. It is also not in dispute that the deceased has five dependants, i.e., wife, two children and parents. The deceased was a contractor and

was said to be earning Rs.5,000/- as on the date of accident. He also owns Acs.4.39 guntas of dry land. 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 '12', granted an amount of Rs.2,40,000/- towards loss of dependency. The Tribunal further granted an amount of Rs.15,000/- to the wife of the deceased towards loss of consortium and Rs.2,500/- towards transportation to hospital, extra nourishment and medicines, damages to clothing and funeral expenses. In all, the Tribunal granted a compensation of Rs.2,57,500/-.

8. The evidence of P.W.1 (wife of the deceased) is that the deceased was a contractor and was earning Rs.5,000/- per month, besides possessing dry land admeasuring Acs.4.39 guntas, which is evident from Exs.A.7 to A.10-Xerox copies of Pattadar Passbooks. Admittedly, there are five dependants on the deceased, who are his wife, two children and parents. Under these circumstances, assessing the monthly income of the deceased at Rs.2,500/- by the Tribunal is on lower side. Considering the totality of the circumstances, this Court deems it appropriate to take the income of the deceased as Rs.3,000/- per month i.e., Rs.36,000/- per annum and after deducting 1/4th of it towards personal expenses of the deceased, the annual loss of dependency would come to Rs.27,000/- (Rs.36,000/- minus 1/4th of it). In view of the decision of the Apex court in case

between Sarla Verma v. Delhi Transport Corporation[1], the appropriate multiplier applicable to the age of the deceased, i.e., 48 years, is '13'. Thus the total loss of dependency would come to Rs.3,51,000/- (Rs.27,000/- x 13). In addition to the above, this Court also deems it appropriate to grant an amount of Rs.30,000/- to the wife of the deceased towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.9,000/- towards funeral expenses. In all, the claimants are entitled for a total compensation of Rs.4,00,000/-.

9. It is evident from the record that the deceased died due to rash and negligent driving of the driver of the jeep bearing registration No.AP-28-C-7542. Admittedly, the policy of the offending vehicle was an 'act Policy'. In similar circumstances, the Apex Court, in a recent decision in Manuara Khatun and others Vs. Rajesh Kumar Singh and others[2], directed the insurance company to satisfy the award at the first instance and then recover the same from the insured in the very same proceedings before the Tribunal. In the light of the said decision, the direction by the Tribunal to the insurer of the offending vehicle (the United India Insurance Company Limited) to satisfy the award at the first instance and then recover the same from the insured in the very same proceedings before the Tribunal holds good.

10. In the result, the M.A.C.M.A.No.1103 of 2005 filed by the claimants is allowed, modifying the order, dated 21.02.2005,

---

[1] AIR 2009 SC 3104
[2] 2017 ACJ 1031

passed in O.P.No.912 of 2002, by the Tribunal, enhancing the compensation from Rs.2,57,500/- to Rs.4,00,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till realisation. On deposit of the compensation, the claimants are permitted to withdraw the entire amount along with the interest accrued thereon. Consequently, M.A.C.M.A.No.1529 of 2005 filed by the Insurance Company is dismissed. It is needless to state that the Insurance Company is entitled to recover the compensation amount deposited from the owner of the offending vehicle in the very proceedings before the Tribunal by filing Execution Application. The other directions of the Tribunal holds good. The enhanced compensation shall be shared by the claimants as follows:-

Appellant No.1 (wife)	:	Rs.1,02,500/-
Appellant No.2 (son)	:	Rs.10,000/-
Appellant No.3 (daughter)	:	Rs.10,000/-
Appellant No.4 (father)	:	Rs.10,000/-
Appellant No.5 (mother)	:	Rs.10,000/-

Miscellaneous petitions, if any, pending in both these appeals, stand closed.

____
Dr. SHAMEEM AKTHER, J

17th July, 2018
Bvv