HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No. 426 OF 2012

J U D G M E N T :

This Civil Miscellaneous Appeal is arising out of the order dated 06/01/2010 passed in O.P.No. 1968 of 2005 by the Motor Accidents Claims Tribunal-cum-III-Additional Chief Judge, Civil Court, Hyderabad.

2. The brief facts of the case are that :

The petitioners are the legal heirs of the deceased and they have filed a claim-petition under section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.12,00,000/- on account of the death of the deceased in a motor accident that took place on 19/12/2004 at about 08:00 p.m., at Uppununthala.

3. The Tribunal on consideration of oral evidence of PWs.1 to 3 and documentary evidence Exs.A-1 to A-8 has awarded compensation of Rs.3,84,000/- with interest @ 7.5% per annum from the date of filing petition till its realization.

4. Aggrieved by the impugned order and decree, this appeal has been filed by the claimants.

5. Heard the learned counsel for the appellants and learned standing counsel for the second respondent-the New India Assurance Company Limited.

6. Sri G.L. Narasimha Rao, learned counsel for the appellants submits that the quantum of compensation and exoneration of liability of the second respondent-Insurance company is not in accordance with law and the finding

is liable to be set aside. The second contention is that the quantum of compensation awarded by the Tribunal is not adequate and it is not a just compensation, and therefore, sought enhancement of compensation.

7. Sri A. Ramakrishna Reddy, learned standing counsel for the second respondent-Insurance company vehemently submitted that the evidence on record and the contents of F.I.R., would show the accident occurred while the deceased was sitting on mud-guard and travelled in the tractor bearing No. AP-22G-3776 and trolly bearing No. AP-22G-3777. The Tribunal has correctly held that the insurer is not liable to pay the compensation, since the terms and conditions of the policy are violated, as the deceased travelled in the said tractor by sitting on mud-guard, which is not permitted.

8. The learned counsel for the appellants submits that the F.I.R. was dated 20/12/2014, whereas the 161 Cr.P.C. statement of the complainant was recorded on 19/12/2014 i.e., one day prior to the F.I.R. It is further submitted that the charge sheet is the culmination of the investigation. On receipt of complaint, after recording of 161 Cr.P.C. statement of the witnesses and after completion of investigation charge sheet has been filed showing the accused is liable for rash and negligent act. Therefore, it is submitted that there is liability for the Insurance Company in this matter and the liability cannot be exonerated.

9. As far as this contention is concerned, the Tribunal on considering the entire evidence on record has arrived at a conclusion that there is no liability for the Insurance Company, therefore, the findings of the Tribunal are based on the contents of Ex.A-1/F.I.R. It is pertinent to note that in the 161 Cr.P.C. statement and the evidence of PWs.1 to 3, it is clearly stated that the accident occurred due to the rash and negligent driving of the tractor. Therefore, in

the light of the evidence of the witnesses and in view of the fact that the investigation also reveals that the accident occurred due to the negligence of the driver of the tractor, the liability of the insurer cannot be exonerated. Therefore, the finding of the Tribunal in exonerating the liability of the insurer is set aside.

10. The learned counsel for the appellants submitted that the award passed by the Tribunal is not adequate for the reason that the legal heirs of the deceased are four in number, whereas the Tribunal deducted 1/3rd out of the income of the deceased towards his personal expenses. The Tribunal ought to have deducted 1/4th of the income in view of the ratio laid down in SARALA VERMA's case. It is obvious that 1/4th amount has to be deducted instead of 1/3rd as laid down in SARALA VERMA's case for the purpose of computation. The appellants are entitled to future prospects of 40% as the income of deceased, Rs.3000/- x 40% = Rs. 1200/-. The notional income is Rs.4,200/- to the extent of 40% as the income of Rs.3000/- per month. Since the appellants are four in number, 1/4th has to be deducted. If 1/4th is deducted from Rs.4,200/- then it comes to Rs.1,050/-. Rs.4,200=00 – Rs.1050=00 = Rs.3,150=00. Therefore, the monthly contribution by the deceased to the family would be Rs.3,150=00. Since the deceased was aged about 32 years, the appropriate multiplier as per the decision of the Hon'ble Supreme Court in *SARALA VERMA V/s. DELHI ROAD TRANSPORT CORPORATION* [1], is 16.

The notional income of Rs.3,150/- x 12 x 16 comes to Rs.6,04,800=00. Thus, the contribution by the deceased to the family would be Rs.6,04,800=00. In addition to that, as per the decision of the

[1] **) 2009 ACJ-1298**

Hon'ble Supreme Court in *NATIONAL INSURANCE COMPANY V/s. PRANAY SETHI*[2], the appellants are also entitled for Rs.70,000=00 towards loss of consortium, loss of estate and funeral expenses. The appellants are entitled for a total compensation of Rs. 6,04,800/- + Rs.70,000/- = Rs. 6,74,800=00.

11. Having regard to the facts and circumstances of this case, the compensation awarded by the Tribunal is enhanced from Rs.3,84,000=00 to Rs.6,74,800=00 with interest @ 7.5% per annum from the date of filing of claim-petition till its realization. The second respondent-Insurance Company is directed to deposit the above compensation amount within one month from the date of receipt of a copy of this judgment. On such deposit, the appellants are entitled to withdraw the compensation amount in terms of the award and decree. The finding of the Tribunal with regard to exonerating the liability of the insurer is set aside and the respondents 1 and 2 are jointly and severally liable to pay the compensation amount to the appellants as directed in this appeal.

12. In the result, this Civil Miscellaneous Appeal is disposed of accordingly. No costs.

13. As a sequel, miscellaneous petitions if any, pending in this M.A.C.M.A., shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD.

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HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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