THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.2707 and 2749 of 2005

COMMON JUDGMENT:

Since the order under challenge in both these appeals is one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the Order dated 02.06.2005 passed in O.P.No.188 of 2001 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District ('the Tribunal', for brevity), the United India Insurance Company Limited preferred M.A.C.M.A.No.2707 of 2005 seeking to set aside the impugned order and the claimants preferred M.A.C.M.A.No.2749 of 2005 seeking enhancement of compensation.

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

4. Learned counsel for the appellants in M.A.C.M.A.No.2749 of 2005 and respondents 1 to 5/claimants in M.A.C.M.A.No.2707 of 2005 would contend that the compensation granted by the Tribunal is meagre. The Tribunal had not granted adequate compensation and ultimately prayed to enhance the same as claimed.

5. On the other hand, learned Standing Counsel for the Insurance Company representing the appellant in

M.A.C.M.A.No.2707 of 2005 and 2nd respondent in M.A.C.M.A.No.2749 of 2005 would submit that the Tribunal, without there being a valid insurance policy, granted excess compensation 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 assessment and grant of compensation of Rs.4,00,000/- by the Tribunal in favour of the claimants, due to the death of the deceased in the subject accident is just and reasonable?

2. Whether the appellant-Insurance Company is liable to pay the compensation to the claimants?

7. As seen from the entire oral and documentary evidence, the Tribunal assessed the compensation payable to the claimants as mentioned hereunder:

1.	Contribution to Family	Rs.3,88,800/-
2.	Funeral expenses	Rs.2,000/-
3.	Loss of consortium	Rs.5,000/-
4.	Loss of estate	Rs.4,200/-
Total		Rs.4,00,000/-

The Tribunal had taken all the facts and circumstances into consideration and assessed the above compensation on account of the death of the deceased-A.V.Ramana, who died in a motor accident occurred on 30.05.1999, due to rash and negligent driving of the driver of scooter bearing No.AP-28-J-8700. Under these circumstances, the assessment and award of compensation of Rs.4,00,000/- in favour of the claimants is just and reasonable and there is nothing to enhance the same.

8. Now the point to be answered is whether the Tribunal justified in directing the insurance company to pay the compensation to the claimants, who are the dependants of the deceased. In a recent decision of the Apex Court in Manuara Khatun and others Vs. Rajesh Kumar Singh and others[1], the deceased was travelling as gratuitous passenger in a private vehicle. The Apex Court directed to satisfy the award at the first instance and then recover the same from the insured in the very same proceedings before the Tribunal.

9. In the instant case, as per the evidence on record, the deceased was travelling on a scooter bearing registration No.AP-38-J-8700, as a pillion rider. The driver of the said scooter drove the same in rash and negligent manner, as a result of which, the deceased suffered multiple fractures and head injury. Immediately, the deceased was shifted to Osmania General Hospital, Hyderabad, and while undergoing treatment, he succumbed to the injuries.

10. Ex.B.1 is the copy of the Insurance Policy. It is an 'act Policy'. In Manuara Khatun's case (1 supra), there was no mention that the direction to pay and recover was given exercising power under Article 142 of the Constitution of India. The Insurance policy was valid on the date of accident. The deceased was not responsible for his death while he was pillion rider of the offending scooter. The accident and death occurred due to rash and negligent driving of driver of scooter. For these reasons, the claimants cannot claim compensation from the

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insurance company of the offending scooter. The respondents 1 & 2/claimants in this appeal are similarly placed. In view of the fact that the policy is an act policy, as per the directions of the Hon'ble Supreme Court in Manuara Khatun's case (1 supra), the Insurance Company is entitled to recover the compensation amount from the owner of the offending vehicle in the very same proceedings before the Tribunal by filing an execution petition.

11. In the result, M.A.C.M.A.No.2707 of 2005 filed by the United India Insurance Company Limited is allowed accordingly. M.A.C.M.A.No.2749 of 2005 filed by the claimants for enhancement of compensation is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

26th June, 2018
SSP