

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1330 OF 2005

AND

CROSS OBJECTIONS (SR) No.24378 OF 2005

COMMON JUDGMENT:

M.A.C.M.A.No.1330 of 2005, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the National Insurance Company Limited, aggrieved by the grant of compensation of Rs.2,49,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation, as against a claim of Rs.5,00,000/-, to respondent Nos.1 to 5/claimants, by the learned Chairman, Motor Accident Claims Tribunal – cum – Principal District Judge, Kurnool (for short, “the Tribunal”) *vide* order, dated 23.11.2004, passed in M.V.O.P.No.423 of 2003 and the claimants preferred Cross Objections (SR) No.24378 of 2005 seeking enhancement of compensation.

2. Though the appeal is posted under the caption “For Orders”, there is no representation for the appellant/Insurance Company.

3. Learned counsel for respondent Nos.1 to 5/claimants would contend that the Tribunal erred in granting compensation of Rs.2,49,000/- as against a claim of Rs.5,00,000/-, which is meagre, and hence, the claimants have filed the cross objections seeking enhancement of the compensation; that the Tribunal had not properly calculated the amount payable to the claimants and ultimately, prayed to enhance the compensation.

4. In the grounds of appeal, it is urged that the offending auto bearing registration No.AP.21-V/5037 was overcrowded at the time

of the accident, and that the driver and the owner of the auto violated terms and conditions of the policy of insurance and ultimately it is prayed to set aside the impugned award insofar as the insurer is concerned.

5. While deciding the liability against the insured, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending auto bearing registration No.AP21V 5037; there was valid insurance for the said auto; respondent no.6 herein (owner of the auto) is vicariously liable for the acts of the driver of the offending auto and under the policy of insurance, the insurer undertook to indemnify the insured. Admittedly, there were 17 passengers in the offending auto at the time of the accident. Travelling capacity of the passengers is only 3. It clearly demonstrates the violation of the terms and conditions of the policy of insurance of the offending auto marked as Ex.B1. There is evidence of R.W.1 to that effect. In view of that, the insurer can be directed to deposit the compensation determined at first instance and then recover the same from the owner of the offending auto bearing registration No.AP21V 5037 i.e. respondent No.6 herein.

6. Insofar as the cross objections filed by the claimants are concerned, the Tribunal had taken the age of the deceased Chand Basha as 30 years, his income as Rs.18,000/- per annum as a mason and after deducting 1/3rd thereof towards his personal expenses, it had taken the contribution of the deceased as Rs.12,000/- per annum and by applying the multiplier "18", the Tribunal had awarded the compensation of Rs.2,16,000/- towards

loss of income. The Tribunal awarded an amount of Rs.15,000/- to claimant No.1 towards loss of consortium. The Tribunal also awarded an amount of Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.500/- towards transportation and in all, the Tribunal awarded an amount of Rs.2,49,000/- along with interest at the rate of 9% percent per annum from the date of petition till the date of realisation and the same is just and reasonable. The Tribunal had granted just and reasonable compensation to the claimants. There are no circumstances to interfere with the same. Hence, the cross objections are also liable to be dismissed.

7. In the result, M.A.C.M.A.No.1330 of 2005 filed by the National Insurance Company Limited is allowed directing it to deposit the compensation determined by the Tribunal vide impugned order, dated 23.11.2004, passed in M.V.O.P.No.423 of 2003 at first instance and then recover the same from the owner of the offending vehicle AP21V 5037 i.e. respondent No.6 herein. Cross-objections are dismissed. There shall be no order as to costs of the appeal and cross-objections. The other directions given by the Tribunal remain unaltered.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 26.07.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



M.A.C.M.A.No.1330 OF 2005
AND
CROSS OBJECTIONS (SR) No.24378 OF 2005

Date: 26.07.2018

AMD