

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3598 of 2005

and

Cross Objections (SR) No.3192 of 2006

JUDGMENT:

Challenging the order, dated 30.09.2005, passed in O.P.No.33 of 2004 by the Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Anantapur ('the Tribunal', for brevity), the New India Assurance Company Limited preferred MACMA No.3598 of 2005 seeking to set aside the impugned order and the claimants preferred Cross Objection (SR) No.3192 of 2006 seeking enhancement of compensation.

2. Heard both sides. Perused the record.

3. The learned Standing Counsel for the appellant in MACMA No.3598 of 2005 and the 1st respondent in Cross Objection (SR) No.3192 of 2006 (Insurance Company) would contend that the deceased-Syed Mohammed died due to medical negligence and not due to the injuries suffered by him in the subject accident occurred on 06.05.2002. The Tribunal granted excess compensation of Rs.1,39,500/- with interest @ 7.5% per annum from the date of petition till realisation as against a claim of Rs.2,00,000/- and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned counsel for the respondents 1 to 6 in MACMA No.3598 of 2005 and the Cross Objectors in Cross Objection (SR) No.3192 of 2006 (claimants) would contend would contend that the Tribunal granted a meagre compensation of

Rs.1,39,500/- as against a claim of Rs.2,00,000/-. The Tribunal did not grant adequate compensation on different heads and ultimately prayed to enhance the compensation as claimed.

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

1. Whether the Tribunal justified in granting compensation of Rs.1,39,500/- with interest at the rate of 7.5% per annum from the date of petition till realisation in favour of the claimants?
2. Whether the impugned order and decree passed by the Tribunal is liable to be set aside.

Points 1 and 2:-

6. As per the material on record, the deceased-Syed Mohammed died in the subject accident occurred on 06.05.2002, due to rash and negligent driving of the driver of the jeep bearing registration No.AP-02-E-7308. No evidence was adduced to substantiate the contention that the death was due to medical negligence. The rashness and negligence was rightly held to be in a ratio of 90:10 between the driver of the jeep and the deceased respectively. He was a rickshaw puller and was aged 50 years as on the date of the subject accident. The Tribunal, after analysing the entire evidence on record, took the monthly income of the deceased as Rs.1,500/- per month, deducted 1/3rd of it towards personal expenses of the deceased, applied multiplier '11' and assessed an amount of Rs.1,32,000/- towards loss of dependency. The Tribunal further awarded an amount of Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.3,000/- towards funeral expenses. In all, the Tribunal

assessed the compensation payable to the appellants-claimants as Rs.1,55,000/-, but awarded only Rs.1,39,500/- (90% of the assessed compensation) with interest @ 7.5% per annum from the date of petition till realisation, holding that the deceased was also responsible for the occurrence of the subject accident to an extent of 10%.

7. In the circumstances of the case, grant of compensation of Rs.1,39,500/- with interest @ 7.5% per annum from the date of petition till realisation for the death of a man aged 50 years and who was a rickshaw puller is not excessive. The Tribunal is justified in granting the aforementioned compensation in favour of the claimants. There are no circumstances either to interfere with the order under challenge or to enhance the compensation.

8. Accordingly, M.A.C.M.A.No.3598 of 2005 filed by the Insurance Company and Cross Objection (SR) No.3192 of 2006 filed by the claimants are dismissed, confirming the impugned order, dated 30.09.2005, passed in O.P.No.33 of 2004 by the Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Anantapur. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

18th September, 2018
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