THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

<u>M.A.C.M.A.No.2495 of 2015</u>

<u>JUDGMENT</u>: (Per Hon'ble Dr.SA,J)

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/Reliance General Insurance Company Limited, aggrieved by the Award, dated 03.07.2015, passed in M.V.O.P.No.25 of 2012 by the learned XXVII Additional Chief Judge-cum-Chairman, Motor Vehicle Accident Claims Tribunal, City Civil Court, Secunderabad (for short "the Tribunal"), wherein the subject M.V.O.P filed by the respondents 1 to 4/claimants claiming compensation of Rs.60,00,000/- was allowed in part, awarding compensation of Rs.56,90,000/- with interest @ 7.5% per annum from the date of petition, till realisation.

2. Heard Sri T.Mahender Rao, learned counsel for the appellant/Insurance Company, Sri M.V.Pratap Kumar, learned counsel for the respondent No.5/owner of the crime vehicle and perused the record. Though Sri P.N.Murthy, learned counsel filed Vakalath on behalf of respondent Nos.1 to 4/claimants, there is no representation for respondents Nos.1 to 4, today.

3. The learned counsel for the appellant/Insurance Company would contend that the Court below placed reliance over Ex.A.6-Assessment Order for the year 2005–06, Ex.A.7-Assessment Order for the year 2006-07 and Ex.A.8-Assessment Order for the year 2007-08, to arrive at a conclusion that the annual income of the deceased was Rs.6,00,000/- but there is no such mention in Exs.A.6 to A.8. As per the Income Tax Returns of the deceased, for the year 2005-06, she declared her total income as Rs.52,372/-; for the year 2006-07, she declared the total income as Rs.1,06,475/-; and for the year 2007-08, she declared the total income as Rs.4,91,965/-. Moreover, the respondent Nos.1 to 4/claimants did not file full Assessment Orders along with Exs.A.6 to A.8. It is also contended that there was no driving license to the driver of the crime vehicle bearing No.HR 38 W 0511 and the driving license produced before the Court below is a fake one and ultimately prayed to allow the appeal and set aside impugned Award dated 03.07.2015 passed by the Tribunal.

4. On the other hand, learned counsel for the respondent No.5/owner of the crime vehicle would contend that the driver was possessing valid driving licence as on the date of accident and the driving licence was issued by the Licensing Authority, M.V.Department, Mathurai. Ex.B.4-copy of driving licence substantiates the same. The Tribunal considering the evidence on record, rightly held that the driver was holding valid driving licence and there was no violation of terms of policy, as alleged. There are no circumstances to interfere with the impugned Award dated 03.07.2015 passed by the Tribunal and ultimately, prayed to dismiss the appeal.

5. When this Court examined the photocopy of Ex.B.4, it reveals that the Licensing Authority, M.V.Department, Mathurai issued driving licence to the driver of the crime vehicle to drive Motor Cycle, Light Motor Vehicle and Transport Vehicle and it is valid from 19.10.2005 to 18.10.2008. The Tribunal considering the evidence placed before it was pleased to hold that the driver was holding valid driving licence and there was no violation of terms of policy, as alleged.

6. Sofaras the contention of the appellant/Insurance Company regarding computation of annual income of the deceased by the Tribunal is concerned, the Tribunal having placed reliance over Ex.A.6-Assessment Order for the year 2005–06, Ex.A.7-Assessment Order for the year 2006-07 and

Ex.A.8-Assessment Order for the year 2007-08 arrived at a conclusion that the annual income of the deceased was Rs.6,00,000/-. According to the learned counsel for the appellant/Insurance Company, as per the Income Tax Returns of the deceased, for the year 2005-06, she declared her total income as Rs.52,372/-; for the year 2006-07, she declared the total income as Rs.1,06,475/-; and for the year 2007-08, she declared the total income as Rs.4,91,965/-. This Court was pleased to examine photocopies of Exs.A.6 to A.8 and they are incomplete. The full Assessment Orders for the aforesaid years were not marked along with Exs.A.6 to A.8. The full Assessment Orders of Exs.A6 to A8 would reveal that the deceased declared her total income as Rs.52,372/- for the year 2005-06; Rs.1,06,475/- for the year 2006-07; and Rs.4,91,965/- for the year 2007-08, but not Rs.6,00,000/- annually. Therefore, the Tribunal coming to a conclusion that the deceased was earning Rs.6,00,000/- annually is not supported by documentary evidence. The Tribunal ought not to have arrived at such a conclusion by looking at part of the Assessment Orders marked as Exs.A6 to A8. In view of the above circumstances, to arrive at a correct conclusion with regard to the annual income of the deceased and award compensation to the respondents 1 to

4/claimants, the impugned order dated 03.07.2015 passed in MVOP.No.25 of 2012 by the Tribunal, requires to be set aside.

7. Under these circumstances, the impugned order dated 03.07.2015, passed in M.V.O.P.No.25 of 2012 by the learned XXVII Additional Chief Judge-cum-Chairman, Motor Vehicle Accident Claims Tribunal, City Civil Court, Secunderabad, is set aside. Consequently, the subject M.V.O.P is restored to its file. It is made clear that the Tribunal shall not get influenced by any of the observations made in this judgment and dispose of the subject M.V.O.P afresh, in accordance with law. The Tribunal shall also take into consideration the decision of the Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others***[1], while determining the compensation payable to the respondents 1 to 4/claimants.

8. Accordingly, this appeal is disposed of.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

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Dr. SHAMEEM AKTHER, J

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NAGESH BHEEMAPAKA,J

Date: 21st October, 2022
scs/pns

[1] (2017) 16 Supreme Court Cases 680