

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD
RAO**

+ M.A.C.M.A No.624 of 2009

%19.01.2015

Between:

Bajaj Allianz General Insurance Co. Ltd.,
Rep. by its Manager, Visakhapatnam.
.... Appellant

AND

Gujjala Ramulamma
and others.
Respondents

....

**! Counsel for Appellant : Sri N.S. Bhaskara
Rao**

^ Counsel for Respondents 1 & 2 : Sri N. Subba Rao

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> Head Note:

? Cases referred:

- 1) AIR 1992 SC 1593
- 2) 2014 ACJ 526 (SC)
- 3) 2007 ACJ 1003 (AP)
- 4) (2008) 3 SCC 464
- 5) AIR 2004 SC 1531
- 6) 2005 ACJ 99 (SC)
- 7) 2013 ACJ 1253 (SC)

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.624 of 2009

JUDGMENT:

Challenging the Award dated 05.09.2008 in

M.V.O.P.No.1340 of 2007 passed by the Chairman, M.A.C.T-cum- District Judge, Guntur (for short “the Tribunal”), the 2nd respondent in the O.P/Bajaj Allianz General Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants are the parents of 5 years old deceased boy—Gujjula Srinu. Their case is that on 25.07.2007 at about 10.15 am the deceased boy was returning to his house after drinking water and when he entered the edge of the road, one auto bearing No.AP 7TT 8668 being driven by its driver at high speed and in a rash and negligent manner, dashed the deceased boy causing instantaneous death. It is averred that the accident was occurred only due to the fault of the driver of the offending auto and due to abrupt death of deceased they lost all their hopes on the boy. With these averments they filed M.V.O.P.No.1340 of 2007 under Section 163-A of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are the owner and insurer of the offending auto and claimed Rs.1,75,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimants in strict proof of the same.

d) During trial, PW1 was examined and Exs.A1 to A5 were marked on behalf of claimants. RWs.1 and 2 were examined

and Exs.B1 to B4 were marked on behalf of the respondents.

e) The Tribunal on appreciation of both oral and documentary evidence on record, had awarded total compensation of Rs.1,70,000/- with costs and interest at 7% p.a under different heads as follows:

Loss of dependency	Rs.1,50,000-00
Loss of estate	Rs. 15,000-00
Transportation and funeral expenses	Rs. 5,000-00

Total	Rs.1,70,000-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri N.S.Bhaskar Rao, learned counsel for appellant/ Insurance Company and Sri N.Subba Rao, learned counsel for respondents 1 and 2/claimants. Though notice to R3/owner of the auto was served but there is no representation on his behalf, hence treated as heard.

5) Before discussing the appeal, it must be mentioned that the Tribunal at the end of para-9 of its award came to the conclusion that there was no substantial breach of terms of policy and held that both the respondents are jointly and severally liable to pay compensation to petitioners. Accordingly, it awarded compensation against both the respondents. However, a perusal of point No.4 of the decree reads as if the

2nd respondent/Insurance Company was given liberty to recover the compensation by due process of execution from the 1st respondent/owner in case it if it deposits the compensation in Tribunal. It is, thus, obvious that decree was not drafted in consonance with the award. Therefore, this appeal is discussed on the premise that Tribunal determined that both the respondents are jointly and severally liable to pay compensation.

6 a) Impugning the award, learned counsel for appellant/Insurance Company firstly argued that the Tribunal erred in fastening liability on the Insurance Company despite the fact that driver of the goods auto had no valid and effective licence to drive the said vehicle which was a transport vehicle and that the owner willfully breached the terms of the policy. The Tribunal's observation, he criticized, at the time of accident the vehicle was not carrying goods and therefore there was no substantial breach of terms of policy is not a correct appreciation of facts and evidence. He submitted that whether the auto was empty or with goods at the time of accident would not change its categorization as a "transport vehicle" and in that view driver who had licence to drive only a "non-transport vehicle" can still be regarded as having no valid and effective licence. In the back drop of these facts, the Tribunal ought to have exonerated the Insurance Company totally. However, it erroneously fastened liability on the Insurance Company. He alternatively argued that the Tribunal had no power to direct the

Insurance Company to pay and recovery the compensation from the insured. He argued that pay and recovery was ordered by the Apex Court in some of its judgments in exercise of plenary power under Article 142 of Constitution of India which cannot be exercised by High Courts and lower Tribunals. In this regard, he cited the decision of the Supreme Court reported in ***State of Punjab and others v. Surinder Kumar and others***^[1].

b) Secondly, criticizing the quantum of compensation as excessive, learned counsel argued that it being a child death case i.e. death of 5 years old boy, the Tribunal ought not to have fixed the notional income of the deceased as Rs.15,000/- for computation of compensation and due to this error compensation was drastically increased. Learned counsel argued that in the matter of awarding compensation the latest decision of Apex Court reported in ***Puttamma and others v. K.L.Narayana Reddy and another***^[2] shall be followed and if it is so, the compensation will be lessened.

7 a) Per contra, learned counsel for respondents 1 and 2/claimants firstly argued that there was no breach of terms of policy and hence the Tribunal rightly fastened liability on the Insurance Company.

b) Secondly, he argued that the Tribunal has rightly fixed the notional income of the deceased as Rs.15,000/- p.a. and selected '15' as multiplier for computation of compensation and

in fact such a procedure was upheld by our High Court in a decision reported in ***National Insurance Company Limited v. Pittala Ramulu and others***^[3]. He thus prayed to dismiss the appeal.

8) In the light of above arguments, the points for determination in this appeal are:

- 1) *Whether the Tribunal was right in fastening liability of Insurance Company?*
- 2) *Whether compensation awarded by the Tribunal is just and reasonable or needs interference?*

9) **POINT No.1:** It is a claim under Section 163-A of MVAct. The accident, involvement of goods auto bearing No.AP 7TT 8668 and death of deceased are not in dispute.

a) The first contention of appellant is that the driver had no valid and effective licence to drive the goods carrying auto which is a transport vehicle and therefore, for the deliberate violation of terms of policy committed by the owner, the Insurance Company shall be exempted from liability.

b) In this context, a perusal of evidence of RWs.1 and 2 and Ex.B2—driving licence would show that the driver—B.Basava Punnayya possessed licence to drive light motor vehicle of non-transport type whereas the crime vehicle is a goods carrying auto i.e, a transport vehicle as classified by the Government of India in its Notification SO 1248 (E) dated 05.11.2004. In that context, it must be said that though the

driver was 'duly licensed' but he was not having 'effective driving licence' to drive the type of vehicle involved in accident. It appears relying upon the decision reported in ***National Insurance Company Limited v. Annappa Irappa Nesaria @ Nesaragi and others***^[4] wherein it was held that a light motor vehicle includes a "light passengers carrying vehicle" and also "light goods carriage vehicle", claimants argued before Tribunal that goods auto in question was a light goods vehicle and since the driver had licence to drive light motor vehicle, he shall be deemed to have effective licence. It appears that this argument was found favour with the Tribunal which held that vehicle in question was a goods auto and light motor vehicle and it was empty at that time and driver of the auto had valid licence to drive passengers auto and hence, it cannot be said that he had no valid driving licence. I am afraid, the observation of the Tribunal is not correct. There is no demur that the definition of light motor vehicle given under Section 2(21) of MV Act covers both transport and non-transport vehicles. The definition reads thus:

"2(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms"

However, in the instant case, though licence was given for light motor vehicle which generally includes both transport and non-transport vehicles, still the licence was restricted to non-transport vehicle. In ***Annappa Irappa Nesaria's*** case (4 supra)

the driver was given driving licence to drive light motor vehicle without restricting it to non-transport vehicle as in the instant case. In that context, it was observed that the driver who had valid driving licence to drive a light motor vehicle was authorised to drive a light goods vehicle as well. Whereas in the instant case, as observed supra, though the driver of the crime vehicle had licence to drive light motor vehicle which includes both transport and non-transport vehicles, still his licence was restricted to non-transport vehicle. Hence, though he was duly licensed but not having effective driving licence. In this backdrop, the point is whether the Insurance Company can be totally exempted from the liability. The answer is emphatic 'no' in the light of the observations of Apex Court in the case of ***National Insurance Company Limited vs. Swaran Singh and others***^[5].

In that case, the Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

- a) Fake driving licenses of the driver.
- b) Driver not having licence whatsoever.
- c) No renewal of driving licence as on the date of accident.
- d) License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.
- e) Driver holding only a learner's licence.

The Apex Court after discussing various issues involved in this regard, held that an Insurance Company in order to succeed in its defence pleas touching the driving licence issues must:

- a) Firstly establish that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time.
- b) Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Even upon establishing the above conditions by the Insurance Company, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

10) In the light of above decision, though driver possessed licence for a different vehicle, the Insurance company could not establish that was the fundamental cause for accident and further the owner deliberately violated the terms of the policy. Hence, it is a fit case to direct the Insurance Company to pay compensation at first and later recover from the insured. Here the argument of appellant that such power was vested only with the Supreme Court under Article 142 of Constitution of India cannot be appreciated for, in **Swaran Singh's** case (5 supra)

the Apex Court held that the Tribunal has necessary power and jurisdiction to decide disputes *inter se* between insurer and the insured. The Apex Court further cleared as follows:

“Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.”

Since the above is the clarification by the Full Bench of Apex Court, the contrary argument cannot be sustained. The cited decision in **Surinder Kumar**’s case (1 supra) will not improve appellant’s case.

This point is answered accordingly.

11) **POINT No.2**: This issue is concerned, it is a case of death of 5 years old boy. The Tribunal, as stated earlier, took the notional income of the boy as Rs.15,000/- p.a. and multiplier ‘15’ and computed compensation following the decisions in **Manju Devi and another v. Musafir Paswan and another** ^[6] and **Pittala Ramulu**’s case (3 supra). The above calculation is impugned by the appellant. It is argued that the latest decision of Apex Court in **Puttamma**’s case (2 supra) is to be followed. It must be noted that even if said decision is followed there will be no change in compensation. The Apex Court in that case while expressing its anguish over Central Government’s not amending the Second Schedule of MV Act in view of Section 163-A (3) observed thus:

“Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that the children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988.”

a) In the light of above decision, compensation has to be assessed as per Second Schedule to know whether the same is below or above the minimum limit as prescribed in **Puttamma's** case (2 supra). Since the boy is 5 years old, a suitable multiplier has to be selected. The Apex Court in the case of **Reshma Kumari and others v. Madan Mohan and another**^[7] held as follows:

*“In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in **Sarla Verma vs. Delhi Transport Corporation** {(2009)6 SCC 121} should be followed.”*

b) Following the above, multiplier '15' and notional income of Rs.15,000/- p.a. are to be taken. After deducting $\frac{1}{3}$ rd, the net annual income comes to Rs.10,000/-. Thus, total compensation for loss of future dependency comes to Rs.1,50,000/-. To this, a sum of Rs.15,000/- towards loss of estate and Rs.5,000/-

towards transport and funeral expenses are added, as granted by the Tribunal. Thus, the total compensation comes to Rs.1,70,000/-. Since this amount is higher than the minimum limit prescribed in ***Puttamma***'s case (2 supra), the same is approved. Hence, the compensation awarded by the Tribunal is found to be just and reasonable which needs no interference.

This point is answered accordingly.

12) In the result, this MACMA is partly allowed and ordered as follows:

a) While upholding the compensation awarded by the Tribunal, the Insurance Company/2nd respondent in the O.P is directed to pay compensation to the claimants and recover the same from the owner/Insured by executing this order as a decree.

b) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 19.01.2015

Note: L.R. copy to be marked: Yes/No

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[\[1\]](#) AIR 1992 SC 1593

- [\[2\]](#) 2014 ACJ 526 (SC)
- [\[3\]](#) 2007 ACJ 1003 (AP)
- [\[4\]](#) (2008) 3 SCC 464
- [\[5\]](#) AIR 2004 SC 1531
- [\[6\]](#) 2005 ACJ 99 (SC)
- [\[7\]](#) 2013 ACJ 1253 (SC)