

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

RAO

+ M.A.C.M.A No.623 of 2009

%20.01.2015

Between:

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

AND

Katragadda Vijaya Lakshmi
and others.
Respondents

....

! Counsel for Appellant

: Sri N.S. Bhaskara

Rao

^ Counsel for Respondents 1 & 2 : Sri Ch. Ravindra Babu.

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1992 Supreme Court 1593
- 2) 2004 ACJ 1 (SC)
- 3) 2010 (4) ALD 586

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.623 of 2009

JUDGMENT:

Challenging the Award dated 11.09.2008 in

M.V.O.P.No.639 of 2007 passed by the Chairman, MACT-cum-District Judge, Guntur (for short “the Tribunal”), the 2nd respondent in the O.P/Bajaj Allianz General Insurance Company Limited preferred the instant MACMA.

2 a) On factual side, on 03.04.2007 at about 2.30p.m, when the deceased—Radha Krishna Rao @ Babu was proceeding as pillion rider on Hero Honda Motorcycle CD 100 SS bearing No.AP 27B 4365 and when they reached opposite to Padmaja Hospital, one auto bearing No.AP 7W 8516 being driven by its driver at high speed and in a rash and negligent manner dashed the motorcycle from behind and thereby the deceased and rider of the motorcycle—R.Veeranjaneyulu fell down and received injuries. Immediately they were admitted in Government Hospital, Vinukonda where the deceased succumbed to injuries. It is averred that the accident was occurred due to fault of the driver of the offending auto and due to abrupt death of deceased, the claimants lost their breadwinner and became destitutes. With these averments, the claimants filed M.V.O.P.No.639 of 2007 under Section 163-A and 166 of Motor Vehicles Act,1988 against respondents 1 and 2, who are the owner and insurer of the offending auto and claimed Rs.5,00,000/- 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, PWs.1 and 2 were examined and Exs.A1 to A 8 were marked on behalf of claimants. RWs.1 to 3 were examined and Exs.B1 to B5 were marked on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.3,47,000/- with costs and interest at 7% p.a under different heads as follows:

Loss of income or dependency		Rs.3,12,000-00
Loss of consortium	Rs.	15,000-00
Loss of estate	Rs.	15,000-00
Transportation and funeral expenses	Rs.	5,000-00

Total		Rs.3,47,000-00

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 Ch.Ravindra Babu, 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 a) Challenging the award, learned counsel for appellant firstly argued that though the Tribunal came to a right

conclusion that the driver had driving licence to drive only non-transport auto but drove the passengers auto, however, instead of exonerating the appellant/Insurance Company, erroneously directed it to pay compensation and recover from the insured. He argued that such a right is vested with only Apex Court under Article 142 of the Constitution of India but not on the Tribunal and High Court. In this context, he relied upon the following decision:

i) ***State of Punjab and others vs. Surinder Kumar and others***^[1].

He further argued that pay and recovery principle laid down in ***National Insurance Co. Ltd. vs. Swaran Singh & others***^[2] is not necessary to be followed in every case. On this aspect he relied upon the decision reported in ***New India Assurance Co. Ltd, Tirupati, Chittoor District vs. G.Sampoorna and others***^[3].

b) Nextly, he argued that the Tribunal erred in fixing the notional income of the deceased as Rs.3,000/- p.m without there being any proper evidence and thereby compensation was unduly escalated.

6) Per contra, learned counsel for respondents/ claimants supported the award.

7) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT:** The first argument of the appellant is concerned, it is true that as per Ex.B.2—the driver possessed learners licence to driver non-transport auto rickshaw by the date of accident. The crime vehicle was a transport auto rickshaw. Hence, he was not having effective driving licence. Having regard to it and relying upon the decision of Apex Court in **Swaran Singh’s** case (2 supra), the Tribunal held that it is not a case of driver not having licence at all and there was no gross violation of the terms of the policy and further the violation was not a material violation of the terms of the policy. The Tribunal thus directed the Insurance Company to pay and recover the compensation. The above finding of the Tribunal is now challenged in this appeal on the ground that pay and recovery can be ordered by the Supreme Court under Article 142 of the Constitution of India and the same cannot be ordered by the Tribunal and further even assuming that such power is vested with Tribunals, the same is a discretion but not mandatory in every case as per the dictum laid down in **Swaran Singh’s** case (2 supra). I am afraid, this argument is not correct. In **Swaran Singh’s** case (2 supra), 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.
- a) 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:
- (i) 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.
 - (ii) 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.

- b) In the light of above decision, when the facts and evidence in the instant case are perused, as rightly observed by the Tribunal, it is not a case of driver not holding licence at

all. It cannot be said that his possessing a different licence was the fundamental cause for the accident. Therefore, the Tribunal rightly directed the Insurance Company to pay and recover the compensation. So far as the argument of appellant that such power was vested only with the Supreme Court under Article 142 of the Constitution of India is concerned, in **Swaran Singh's** case (2 supra), the Apex Court held that the Tribunal has necessary power and jurisdiction to decide disputes *inter se* between insurer and insured and further held 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.”

c) In view of the above clarification, the contrary argument of the appellant cannot be appreciated. Hence the cited decisions will not improve his case.

9) So far as quantum of compensation is concerned, the Tribunal having regard to the recitals in Ex.A.1—FIR to the effect that the deceased was running a rice mill on lease, fixed the notional income of the deceased as Rs.3,000/- p.m and accordingly, computed compensation. I see no irregularity in it as contended by the appellant. So at the outset, I find no merits in the appeal.

10) In the result, this M.A.C.M.A. is dismissed by confirming

the award passed by the Tribunal in M.V.O.P.No.639 of 2007.

No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 20.01.2015

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

[\[1\]](#) AIR 1992 Supreme Court 1593

[\[2\]](#) 2004 ACJ 1 (SC)

[\[3\]](#) 2010 (4) ALD 586