

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

+ M.A.C.M.A No.811 of 2009

% 10.07.2015

Between:

Bajaz Allianz Insurance Co. Ltd.
Appellant

....

AND

K.Bharatamma
and others.
Respondents

....

! Counsel for Appellant

: Sri N.Bhaskar Rao

^ Counsel for Respondents

: None appeared

< Gist:

> Head Note:

? Cases referred:

MACMA Nos.924 & 3593 of 2009 dt.25.08.2014

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.811 of 2009

JUDGMENT:

Challenging the Award dated 01.07.2008 in O.P.No.103 of 2007 passed by the Chairman, MACT-cum- Additional 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 22.04.2007 at about 6.00 p.m, when the deceased—K.Rajagopal was proceeding on lorry bearing No.KA 34 5528 from Sangareddy to Narsapur and when it reached near Ramachandrapur, he lost control over the lorry and dashed against the road side tree and consequently he died on the spot. It is averred that due to abrupt death of deceased, the claimants lost their breadwinner and became destitutes. With these averments, the claimants filed O.P.No.103 of 2007 under Sections 140 and 166 of Motor Vehicles Act, 1988 (for short “MV Act”) against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.5,00,000/- as compensation.

b) Respondent No.1/owner 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. R2 contended that driver was not holding valid driving licence at

the time of accident. R2 finally contended that claim is excessive and exorbitant and prayed for dismissal.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A3 were marked on behalf of claimants. RW1 was examined and Exs.B1 to B4 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.4,50,000/- with costs and interest at 6% p.a. under different heads as follows:

Loss of dependency	Rs.4,32,000-00
Loss of consortium	Rs. 10,000-00
Loss of estate	Rs. 5,000-00
Funeral expenses	Rs. 3,000-00

Total	Rs.4,50,000-00

The liability is concerned, the Tribunal on the observations that deceased was a cleaner in the ill-fated lorry and he drove the vehicle and caused the accident on his own fault and that he had no valid driving licence and that Ex.B1— policy was in force but the terms and conditions of the policy were violated, held that appellant/Insurance Company has to pay compensation first and realise the same from the owner/insured.

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. Though notice to R1 to R5/claimants was served but there is no representation on their behalf, hence treated as heard. Notice to R6/owner unserved.

5) Castigating the award of the Tribunal directing the Insurance Company to pay compensation and recover from the owner/insured, learned counsel for appellant vehemently argued that in this case admittedly deceased was only a cleaner but at the relevant time of accident he drove the vehicle without having valid driving licence and caused the accident on his own fault and the owner by allowing an unlicensed cleaner to drive the vehicle committed grave infraction of the terms of the policy and thus the Insurance Company does not attain any liability though policy was in force, but the Tribunal erroneously directed the Insurance Company to pay and recover the compensation. He thus prayed to allow the appeal and exonerate the Insurance Company from its liability.

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

1. When the accident was occurred due to the own fault of driver and resulted in his death, whether his L.Rs. can seek any compensation against the owner and insurer of the accident vehicle?

2. If the point No.1 is held in affirmative, whether the Tribunal can award compensation and if so, whether

under Workmen's Compensation Act, 1923 or under Motor Vehicles Act, 1988 and against whom?

3. To what relief?

7) **POINT Nos. 1 and 2:** Accident, involvement of lorry bearing No. KA 34 5528 and death of deceased being its driver are not in dispute. It is also not in dispute that the deceased was working as cleaner in the ill-fated lorry who drove the lorry at the time of accident and caused the accident due to his own fault. It is a further admitted fact that he had no driving licence. In the light of these facts, the crucial question is whether his L.Rs. can claim compensation.

a) So far as law on the point involved is no more *res integra*. This Court in an unreported decision in ***M.Posham v. S.Kalavathi***^[1] has dealt with the issue of eligibility of L.Rs. to claim compensation when the accident was occurred due to fault of deceased driver himself. In that case, the facts were that the deceased was driving the lorry from Hyderabad to Mandamarri and on the way he lost control over the vehicle and hit the roadside tree resulting in his instantaneous death. His L.Rs. filed claim petition under Section 166 of M.V.Act against the owner and insurer of the lorry. Owner remained ex-parte and Insurance Company repudiated its liability mainly on the plea that accident was occurred due to the fault of deceased himself and further he had no valid licence. It also took a plea that claimants ought to have filed claim petition before the Workmen's Compensation Tribunal against the owner. The

Tribunal in that case held that accident was occurred due to the fault of deceased. Having regard to the fact that the policy which was in force was only an Act policy, awarded compensation against respondents to the extent permissible under Workmen's Compensation Act. Challenging the award, claimants filed two sets of appeals seeking computation of compensation under M.V.Act since their original claim was under Section 166 of M.V.Act. In that back drop, the important point that fell for consideration of this Court in that case was as follows:

“When the accident was occurred due to the fault of deceased/driver himself, whether his L.Rs. can lay claim under Section 166 of MV Act i.e. under fault liability principle and whether the tribunal under the M.V. Act was empowered to adjudicate such claim?”

Discussing the case law on this aspect, this Court in para-10 of its judgment held thus:

“.....So, in substance the law on the point in issue as per the latest judgment available is that when a driver himself is responsible for the accident and a claim petition is filed by him or his L.Rs. under Section 166 of MV Act by choosing the Forum under M.V.Act as per Section 167, then the Tribunal cannot grant him compensation under Section 166 of MV Act (on fault liability principle) but it can award compensation under Workmen's Compensation, since in a claim under Workmen's Compensation Act there is no need to prove the fault or negligence on the part of owner or some other.”

b) Applying the above decision to the facts, in the instant

case also the deceased drove the lorry as an unauthorised driver and caused accident due to his own fault and ultimately died. Though his L.Rs. have exercised option under Section 167 of MV Act and filed claim petition under Section 166 of MV Act, the Tribunal should compute compensation under Workmen's Compensation Act, 1923 only since the accident was caused due to the fault of deceased himself being an employee under his owner.

c) Then liability is concerned, insurer will be liable for compensation payable to the extent payable under Workmen's Compensation Act only. Since in the instant case the Tribunal computed compensation under the provisions of M.V.Act and directed the appellant/Insurance Company to pay and recover compensation, the award is liable to be set aside and matter needs remand with a direction to the Tribunal to compute compensation under Workmen's Compensation Act, 1923.

The Point Nos.1 and 2 are answered accordingly.

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

- a) The award passed by the Tribunal in O.P.No.103 of 2007 is set aside and matter is remanded to lower Tribunal with a direction to compute the compensation under the provisions of Workmen's Compensation Act, 1923 against respondents in OP.
- b) In case the appellant/Insurance Company had already paid compensation under the impugned award and it is more than the compensation payable under Workmen's Compensation Act, the Insurance

Company is entitled to recover the excess compensation paid by it from the insured.

c) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 10.07.2015

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

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[\[1\]](#) MACMA Nos.924 & 3593 of 2009 dt.25.08.2014