HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.353 of 2009

JUDGMENT:

Aggrieved by the Award dated 17.09.2008 in M.V.O.P.No.265 of 2007 passed by the Special Judge for SPE & ACB Cases, III Additional Motor Accident Claims Tribunal (Fast Track Court), Nellore, (for short "the Tribunal"), the claimants preferred the instant MACMA.

2. The factual matrix of the case is thus:

a) As per the claimants, on 26.12.2004 at about 10.00 hours while the deceased Oruganti Chinnaiah and some others were travelling in an auto bearing No. AP 26 W 1632, on Duthaluru – Badvel Road on the way, the auto driver drove the auto in rash and negligent manner and lost control and thereby auto turned turtle, as a result the deceased died and other passengers suffered injuries. It is averred that the auto driver was responsible for the accident and due to untimely death of the deceased, the family members became destitute. On these pleas, the claimants, who are the wife and children of the deceased, filed MVOP under Section 166 of the Motor Vehicles Act and claimed Rs.1,50,000/- as compensation under different heads mentioned in O.P. against respondents 1 and 2, who are the owners and respondent No.3, who is the insurer of the offending auto.

b) Respondents 1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. The 3rd respondent contended that the driver had no valid and effective driving license and therefore, there was a breach of terms of the contract and hence, the 3rd respondent is not liable to pay compensation.

d) O.P.No.264 of 2007 and other connected O.Ps were clubbed together and evidence was recorded in O.P.No.264 of 2007. During the trial, PWs.1 to 6 were examined and Exs.A1 to A 9 were marked on behalf of the claimants. On behalf of the 3rd respondent, RWs1 and 2 were examined and Exs.B1 and B2 wee marked.

e) On appreciation of the facts and evidence, the Tribunal awarded compensation of R.87,000/- with costs and interest @ 6% per annum against the 1st respondent and exonerated the 3rd respondent-insurance company on the main ground that the driver had no driving license to drive transport auto, but having driving license to drive non transport auto only. Hence, the appeal by the claimants.

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

4) Heard arguments of Mrs M.Suguna, learned counsel for appellants/claimants and Smt S.A.V.Ratnam, learned counsel for R3/Insurance Company.

5 a) Learned counsel for the appellants, while challenging the compensation awarded by the Tribunal, firstly argued that the Tribunal erred in exonerating the Insurance Company on the ground that the driver had a different type of license i.e. non transport driving license. Learned counsel argued that it is not a case where the driver was not totally lacking a driving license, but, on the other hand, he possessed a different type of driving license i.e. non transport driving license. The 3rd respondent-insurance company has not established that the owner has knowingly allowed the driver to drive the vehicle and further it has also not established that the fundamental cause for the accident was due to driver possessing non transport license. She further argued that non-transport and transport vehicles are alike and therefore, considering the facts, the Tribunal at least ought to have ordered for pay and recovery.

b) Secondly, learned counsel argued that compensation awarded by the Tribunal was very low and that instead of taking notional income @ Rs.15,000/- per annum, the learned Tribunal ought to have taken the earning capacity of the deceased at Rs.3,000/- per month and in that view of the matter compensation awarded towards loss of estate needs to be reassessed She thus, prayed to allow the appeal. Learned counsel argued that the rate of interest awarded by the Tribunal was very low and sought for enhancement.

c) Per contra, learned counsel for the 3rd respondent-insurance company, supported the award and argued that the Tribunal has rightly exonerated the 3rd respondent-insurance company, in view of the fact that the driver had no valid and effective driving license to drive the passenger vehicle. Regarding the quantum of compensation, learned counsel argued that the deceased was 60 years old and therefore, the Tribunal has rightly fixed his notional income at Rs.15,000/- per annum and there is no reason to re-assess the same and prayed to dismiss the appeal.

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

> *"Whether the award passed by the Tribunal is factually and legally sustainable.?"*

7.**POINT:**

(a) The accident, involvement of auto bearing No. AP 26 W 1632 and death of the deceased are admitted facts. The liability of insurance company and quantum of compensation are bone of contention in the appeal.

b) So far as the liability of insurance company is concerned, the evidences, particularly, Ex.B.1-driving license shows that the driver possessed non-transport driving license for motor cycle with gear and non transport driving license for auto rickshaw for the period from 26.06.2004 to 25.06.2024. The accident in this case was occurred on 26.12.2004 which implies that as on the date of accident he was not holding effective driving license to drive the transport auto rickshaw and to that effect there is a breach of terms of policy. However, the point is whether on this ground the insurance company can be totally exonerated from the liability. I am afraid, it cannot be in view of the decision of the Apex Court in **Swarn Singh v. Union of India and others**[1]. In a case of this nature, as per the principles laid down in the said case, the insurance company can be directed to pay compensation at first and recover the same from the owner/insured. Therefore, in the instant case, the 3rd respondent/insurance company has to pay compensation and recover the same from the 1st respondent/insured.

c) So far as the quantum of compensation is concerned, the Tribunal having observed that as per Ex.A.3-postmortom report, the deceased was 60 years and as there was no documentary evidence regarding his income, notionally fixed his annual income at Rs.15,000/- and accordingly, computed compensation by taking '8' as multiplier. So far as the notional income of Rs.15,000/- is concerned, the same cannot be found fault. So far as the multiplier is concerned, as per the decision of the Supreme Court in ***Smt. Sarla Verma v. Delhi Transport Corporation***[2] '9' is the correct multiplier for the persons in the age group of 56 to 60 and so '9' is accepted as multiplier, Thus, the compensation for loss of dependency comes to Rs.90,000/- (Rs.15,000/- x 9 x 2/3).

d) The Tribunal granted only Rs.2,000/- towards loss of consortium. Learned counsel for the appellants argued that as per the decision reported in ***Rajesh v. Rajbir Singh***[3] a sum of Rs.1,00,000/- can be awarded. In this case, the deceased died at his old age, but not in the prime of his youth. Having regard to this fact, Rs.25,000/- can be awarded towards loss of consortium.

8) Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency		Rs. 90,000/-
Loss of consortium		Rs. 25,000/-
Funeral and transportation Expenses		Rs. 5,000/-
	Total	Rs.1,20,000/-

9) So far as the rate of interest is concerned, the Tribunal awarded 6% p.a., which, in my considered view, is low. Hence, the interest is revised to 7.5% p.a.

10) So the compensation is enhanced by Rs. 33,000/- (Rs.1,20,000/- minus Rs.87,000/-)

11) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

a) Compensation is enhanced by Rs.33,000/- with proportionate costs and interest @ 7.5% per annum from the date of O.P till the date of realisation against respondents 1 and 3.

b) Respondent No.3/insurance company shall pay compensation and realise the same from the 1st respondent/insured.

c) Compensation amount shall be deposited by the respondents within two months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed. No costs.

____

U. DURGA PRASAD RAO, J

Date: 15.07.2015
Note: L.R Copy to be marked: Yes / No
kvrm

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.353 of 2009

Dated 15-07-2015

kvrm

---

[1] (2008)8 SCC 435

[2] 2009 ACJ 1298 (SC)

[3] 2013 ACJ 1403 (SC)