HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.35 OF 2009
AND
CROSS-OBJECTIONS (S.R.) No.32775 of 2014

COMMON JUDGMENT:

This appeal is filed by the second respondent-insurance company challenging the judgment and award dated 01.8.2007 passed in O.P. No.746 of 2005 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereby the Tribunal while awarding an amount of Rs.12,62,500/- towards compensation to the petitioners fastened the liability on the insurance company. The petitioners seeking enhancement of compensation filed Cross-objections (SR) No.32775 of 2014.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 19.10.2004 B. Jaganmohan (hereafter referred to as, the deceased) and his family members were proceeding to Mantralayam from Kanipakam in Maruti Car bearing No.AP 9S 2196. When the car reached near Urdu School Sanitorium, Madanapalle, the driver of the Jeep bearing No.AP 20U 8839 had driven the same in a rash and negligent manner and dashed the car. The accident occurred due to rash and negligent driving of the driver of the jeep against whom the Station House Officer, Madanapalle Police Station registered a case in Crime No.170 of 2004. Due to the accident, the deceased sustained grievous injuries on various parts of the body. The inmates of the car also sustained multiple injuries. The deceased took treatment as inpatient in Rajasekhara Hospital and Mallya Hospital in Bengaluru. On 30.11.2004 while undergoing treatment in Mallya Hospital, the

deceased succumbed to the injuries sustained in the accident. The petitioner No.1 is wife, petitioner Nos.2 and 3 are daughters and petitioner No.4 is the mother of the deceased. The petitioners are dependants on the income of the deceased. The jeep, which belongs to the first respondent, was insured with second respondent-insurance company with effect from 09.10.2004 to 08.10.2005. Hence, the petition claiming a compensation of Rs.25,00,000/- with interest and costs.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition inter alia contending that the accident occurred due to rash and negligent driving of the car by the deceased and there was no negligence on the part of the driver of the jeep. The first respondent entrusted the jeep to the driver knowing fully well that he was not having valid and effective driving licence as on the date of the accident, thereby the first respondent violated the terms and conditions of the policy. Therefore, there is no statutory obligation on the part of the second respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred on 19.10.2004 at about 09.45 p.m., due to rash and negligent driving of the Jeep bearing No.AP 20U 8839 by its driver causing death of the deceased?
2) Whether the petitioners are entitled to compensation and if so, to what amount and from which of the respondents?
3) To what relief?

6. The Tribunal clubbed O.P.No.746 of 2005 with O.P.Nos.752 and 753 of 2005 arose out of the same accident and recorded the evidence

in O.P.No.746 of 2005. On behalf of the petitioners, P.Ws.1 to 9 were examined and Exs.A1 to A26 and Exs.X1 to X6 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

7. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP 20U 8839 and allowed the petition in part by awarding compensation of Rs.12,62,500/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally to deposit the amount within 30 days. Feeling aggrieved by the judgment and award, the second respondent – insurance company preferred the appeal. Being not satisfied with the quanatum of compensation awarded, the claimants preferred the cross-objections.

8. The contention of Sri T.Ramulu, learned standing counsel for the appellant-insurance company is four fold:

(1) The Tribunal failed to consider that the deceased was also equally responsible to cause the accident.

(2) Cross-objections in M.A.C.M.As are not maintainable and therefore, the cross-objections filed by the claimants are liable to be dismissed.

(3) The amount of compensation awarded under various heads is on higher side.

(4) The Tribunal failed to appreciate that the driver of the jeep was not having valid and effective driving licence and erroneously fastened the liability on the second respondent.

9. ***Per contra***, Sri Pasham Krishna Reddy, learned counsel for the claimants-cross-objectors submitted that the Tribunal has not considered Ex.A6 medical bills. He further submitted that the Tribunal has not applied the correct multiplier while determining the quantum of compensation. He further submitted that the amount of compensation

awarded by the Tribunal is too meager.

10. Now, the points that arise for consideration in this appeal are:

> (1) *Whether there was any negligence on the part of the deceased to cause the accident? If so, to what extent he was responsible?*
>
> (2) *Whether cross-objections in MACMAs are maintainable or not?*
>
> (3) *Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?*
>
> (4) *Whether the first respondent violated the terms and conditions of the policy so as to absolve the liability of second respondent-insurance company?*

Point No.1:

11. In order to prove the manner of accident, petitioner Nos.1 and 4 examined themselves as P.Ws.1 and 2 respectively and got marked Exs.A1 to A4. As seen from the testimony of P.Ws.1 and 2, the driver of the jeep had driven the same in a rash and negligent manner and hit the car of the petitioners. As per the recitals of Exs.A1 and A2, certified copies of F.I.R. and charge sheet, the accident occurred due to the rash and negligent driving of the jeep by its driver. A perusal of Ex.A3, post-mortem certificate, reveals that the deceased died due to injuries sustained in the road accident. In the cross-examination of P.Ws.1 and 2, nothing was elicited to shake their testimony so far as the manner of accident is concerned. As per the testimony of R.W.1, the accident occurred due to rash and negligent driving of the car by the deceased. It is not in dispute that R.W.1 is not an eye witness to the accident. R.W.1 being employee of the insurance company the possibility of distortion of the facts in order to avoid payment of compensation to the petitioners cannot be ruled out. The oral testimony of R.W.1 is no way helpful to the second respondent to prove the negligence if any on the part of the deceased. If really the accident took place as pleaded by the second respondent what

prevented the driver of the jeep to inform the Police about the manner of the accident. For one reason or the other, the second respondent did not examine the driver of the jeep or any other person witnessed the accident to substantiate the stand taken by it. The oral testimony of R.W.1 is not supported by documentary evidence. The oral testimony of P.Ws.1 and 2 is fully supported by the recitals of Ex.A1 and A2, certified copies of F.I.R and charge sheet. The predominant contention of the learned counsel for the second respondent is that the deceased was also equally responsible to cause the accident.

12. In ***Syed Sadiq Vs. Divisional Manager, United India Assurance Company***[1] the Hon'ble apex Court at para No.28 held as follows:

> The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellants/ claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

13. In ***Meera Devi Vs. Himachal Pradesh Road Transport Corporation***[2] the Hon'ble apex Court at para No.10 held as follows:

> 10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP 20U 8839. As observed earlier, the second respondent failed to adduce any evidence to substantiate its contention. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. I am unable to countenance the submission made by the learned counsel for the second respondent with regard to contributory negligence if any on the part of the deceased. Hence, point No.1 is answered in favour of the claimants and against the second respondent-insurance company.

Point No.2:

15. Learned counsel for the second respondent submitted that the cross-objections in MACMAs are not maintainable. To substantiate the argument, he has drawn my attention to the decision reported in **New India Assurance Co. Ltd., v Vasireddy Sujatharani**[3]. As per the principle enunciated therein, cross-objections in MACMAs are not maintainable. Recently, a Division Bench of this court had an occasion to deal the similar issue in **United India Insurance Co. Ltd., v Gangisetti Naga Lakshmi**[4]. After analyzing the case-law on the subject including the decision of this Court in **Vasireddy Sujatharani**, the Division Bench, in para Nos.37 and 39, held as follows:

> 37. If the Tribunals strictly adhere to Rule 473, the Tribunals cannot receive documents or even the Tribunals are not competent to permit the parties to amend their pleadings, implead legal heirs under Order 22 or 3rd parties under Order 1 Rule 10 of C.P.C. and parties can be permitted to amend pleadings under Order 6 Rule 17 of C.P.C. etc. Therefore, we feel that strict adherence of Rule 473 of A.P. Motor Vehicles Rules, would not serve the purpose of benevolent or welfare legislation, on the other hand, it amounts to driving the parties from pillar to post for redressal of grievance under the Motor Vehicles Act spending both their time and money, which ultimately defeats the very object of benevolent and welfare

legislation and speedy redressal. While interpreting the provisions of benevolent Act, where two views are possible, the view favourable to the persons for whose benefit the Act is enacted, has to be taken into consideration to achieve the real object. ***Nevertheless, in view of the judgment of the Apex Court, even in the absence of any specific provision permitting Cross-objections, Cross-objections can be entertained and decided by Courts. Concurring with the view expressed by the Apex Court in Panna Lal v State of Bombay, AIR 1963 SC 1516, and the Division Bench judgment of this Court, we have no slightest hesitation to accept the contention of Cross-objectors, while totally disagreeing with the principle laid down by this Court in Vasireddy Sujatharani*** (supra).

38. According to undisputed settled law, even in the absence of any Appeal, the Courts are competent to award just and reasonable compensation directing the parties to pay deficit Court fees on the enhanced compensation. When such liberty is given to the Tribunals and appellate Courts under Motor Vehicles Act, entertaining Cross-objections would not amount in deviating of any procedures.

39. Therefore, in view of the principles laid down by the Apex Court, including the majority Division Bench Judgments of this Court and other High Courts, we are of the considered view that the Cross-objections are maintainable. Accordingly, the point is answered in favour of petitioners-cross-objectors and against the second respondent-Insurance Company.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case 4th cited supra, I am of the considered view that cross-objections in MACMAs are maintainable. This point is accordingly answered.

<u>Point No.3</u>:

17. After taking into consideration the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased may contribute Rs.1,08,209/- per annum to his family members. There are no grounds much less valid grounds to interfere with the above finding. The Tribunal deducted 1/3rd towards personal expenses of the deceased. The number of claimants in this case is

‘4’. As per the principle enunciated in **Sarla Verma v DTC**[5], the Tribunal or court has to deduct 1/4th of the income of deceased towards his personal expenses if the claimants are ‘4’ or more. The Tribunal committed error while deducting 1/3rd towards personal expenses of the deceased. After deducting 1/4th i.e., Rs.27,052/- towards personal expenses of the deceased, his contribution to the family would come to Rs.81,157/-.

18. The Tribunal determined multiplier 11.43 basing on the decision reported in **Bhagwandas v Mohd. Arif**[6]. The deceased was aged about 42 years by the time of his death. As per the principle enunciated in **Sarla Verma**, appropriate multiplier applicable for the age group of 41 – 45 is ‘14’. Taking into consideration the contribution of the deceased to the family as Rs.81,157/- per annum, loss of dependency would come to (Rs.81,157 X 14) Rs.11,36,198/-. The Tribunal awarded an amount of Rs.2,37,000/- and Rs.24,896/- towards treatment of the deceased in two hospitals. The Tribunal rightly awarded the amounts for treatment.

19. The petitioners filed Ex.A6 bunch of medical bills. A perusal of these medical bills reveals that the family members of the deceased purchased medicines in the medical shop of Raja Sekhara Hospital, Bengaluru. Some of these medical bills are not supported by prescriptions. The fact remains that the deceased took treatment as inpatient for a long time. Taking into consideration the nature of the injuries as well as the duration of the treatment undergone by the deceased, I am inclined to award an amount of Rs.50,000/- towards purchase of medicines.

20. The Tribunal basing on the oral testimony of P.W.7 coupled with Ex.A16 bills awarded an amount of Rs.1,08,000/- towards damage of

the car. There are no grounds to interfere with the quantum of compensation awarded towards damage of vehicle. The Tribunal also granted an amount of Rs.30,208/- towards transportation of the dead body.

21. The Tribunal also awarded an amount of Rs.10,000/- towards pain and suffering. The person who suffered mental agony is no more. In such circumstances, the Tribunal ought not to have awarded any amount under the head 'pain and suffering'. The Tribunal awarded an amount of Rs.10,000 towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. Viewed from any angle, the amounts awarded under these heads is not just and reasonable. Hence, I am inclined to award an amount of Rs.50,000/- instead of Rs.22,000/- towards conventional damages in view of the decision of Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**[7]. Thus the petitioners are entitled to the total compensation under the following heads:

			Rs.
1.	Loss of dependency	:	11,36,198
2.	Treatment in Raja Sekhara Hospital	:	2,37,000
3.	Treatment in Mallya Hospital	:	24,896
4.	Purchase of medicines	:	50,000
5.	Car damages	:	1,08,000
6.	Transportation charges	:	30,208
7.	Non-conventional damages	:	50,000
	Total	:	16,36,302

22. Accordingly, point No.3 is answered holding that the petitioners are entitled to Rs.16,36,302/-, instead of Rs.12,62,500/- as awarded by the Tribunal, towards total compensation from the respondent Nos.1 and 2 jointly and severally. Out of the enhanced compensation of

Rs.3,73,802/-, petitioner Nos.1 is entitled to Rs.1,73,802/- and petitioner Nos.2 and 3 are entitled to Rs.1,00,000/- each with proportionate costs and interest thereon.

Point No.4:

23. The oral testimony of R.W.1 coupled with Ex.B1 reveals that the driver of the jeep was having driving licence to drive Light Motor Vehicle (LMV) – non transport as on the date of the accident. A perusal of Ex.B3 reveals that the driver of the jeep had obtained licence to drive LMV-transport with effect from 22.3.2005. It is not in dispute that the crime vehicle is an LMV. The fact remains that the driver of the crime vehicle was having licence to drive LMV non-transport. The crucial question for consideration at this juncture is whether driving of light motor vehicle – transport by a driver having licence to drive light motor vehicle non – transport amounts to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer?

24. To resolve the issue, this court is placing reliance on the following decisions:

In ***S.Iyyapan Vs. United India Insurance Co.***[8] the Hon'ble apex Court held as follows:

> 17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,
>
> (*i*) the vehicle was not driven by a named person,
>
> (*ii*) it was being driven by a person who was not having a duly granted licence, and
>
> (*iii*) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18**.** In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment[5] is, therefore, liable to be set aside.

19**.** We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[9] the Hon'ble apex Court held as follows:

10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

"19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

No contrary view has been brought to our notice.

11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

25. The facts of the case on hand are almost identical to the facts of

the cases cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the recent judgments of the apex Court, this Court is of the view that the owner of the vehicle has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company or to enable the insurer to recover the amount of compensation from the insured, after satisfying the award passed by the Tribunal. Accordingly, this point is answered against the insurance company.

26. In the result, the appeal is dismissed. Cross-objections No.32775 of 2014 is partly allowed enhancing the compensation from Rs.12,62,500/- to Rs.16,36,502/-. The respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs and interest at 7.5% per annum from the date of petition till realization, within a period of two months from the date of receipt of a copy of this order. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.02.2015
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[1] 2014 (2) ALD 133 (SC)

[2] (2014) 4 SCC 511

[3] (2011) 5 ALD 156 (DB)

[4] 2014 (1) An.WR 752 (A.P.)

[5] (2009) 6 SCC 121

[6] AIR 1988 AP 99 = 1987 ACJ 1052

[7] 2014 ACJ 1430

[8] (2013) 7 SCC 62

[9] 2014 ACJ 2873