THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.Nos.9 of 2013 and 1704 of 2014

COMMON JUDGMENT:

M.A.C.M.A.No.9 of 2013 is filed by the insurance company, whereas M.A.C.M.A.No.1704 of 2014 is filed by the claimants, under Section 173 of Motor Vehicles Act, challenging the judgment and award, dated 21.8.2012 passed in M.V.O.P.No.546 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (II-Fast Track Court), Warangal, wherein and whereby an amount of Rs.3,37,000/- was awarded with interest at the rate of 6% per annum as against the claim of Rs.4,00,000/-.

2. The parties to these appeals are hereinafter referred to as they are arrayed in the M.V.O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the appeals, in brief, are as follows: On 25.4.2011, at about 6.00 a.m., Chevvolla Sammakka was proceeding towards bore-well to fetch water in Katryala Village in Warangal District. In the mean while, the driver of TATA Pick-up Vehicle bearing No.AP 17 TY TR 5656 (for short, crime vehicle) had driven the same in a rash and negligent manner and hit Sammakka. Due to the injuries Sammakka (hereinafter referred to as, the deceased) died on the spot. The Station House Officer, Wardhannapet Police Station, registered a case in Crime No.69 of 2011 under Sections 304-A IPC and Section 181 of the Motor Vehicles Act against the driver of the crime vehicle. By the time of the death, the deceased was aged about 46 years and used to earn Rs.6,000/- per month by attending agricultural work and as vegetable vendor. The first respondent is the husband, and petitioner Nos.2 and 3 are the sons of the deceased. The petitioners are dependants on the income of the deceased. The crime vehicle belongs to the first respondent was insured with the second respondent as on the date of the

accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the manner of the accident, age, avocation and earning capacity of the deceased. It is the duty of the petitioners to prove that the driver of the crime vehicle was having valid and effective driving licence as on the date of the accident. The first respondent had violated the terms and conditions of the policy; therefore, there is no obligation on the part of the second respondent to indemnify the liability of the first respondent. Hence, the petition may be dismissed so far as this respondent is concerned.

5. Basing on the rival contentions, the Tribunal framed the following issues:

1. Whether the accident took place due to rash and negligent driving of the vehicle baring No.AP 16TY TR 5656 (TATA Pick-up Van) driven by its driver as per Section 166 of M.V. Act?
2. Whether the petitioner is (*sic*., petitioners are) entitled for compensation? If so, to what amount and from whom?
3. To what relief?

6. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the second respondent, R.Ws.1 and 2 were examined and Exs.B1 to B4 were marked.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.3,37,000/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with proportionate costs and interest at 6% per annum from

the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent preferred MACMA No.9 of 2013 and the claimants preferred MACMA No.1704 of 2014.

8. Learned counsel for the petitioners submitted that the Tribunal has not considered the income of the deceased in right perspective and awarded meagre amount of compensation. He further submitted that the Tribunal also awarded meagre amounts under conventional heads. He also submitted that the findings recorded by the Tribunal are not based on evidence much less legally admissible evidence. ***Per contra***, learned counsel for the second respondent–Insurance Company submitted that taking into consideration the age of the deceased, the Tribunal has awarded just and reasonable compensation. He further submitted that the Tribunal has committed error while fastening the liability on the Insurance Company even though the driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident.

9. Now the points that arise for consideration in these appeals are:

(1) Whether the accident occurred due to the rash and negligent driving of the crime vehicle, which resulted in the death of the deceased?

(2) Whether the Tribunal has awarded just and reasonable compensation?

(3) Whether there are any justifiable grounds to interfere with the judgment and award of the Tribunal?

Point No.1:

10. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased. The Tribunal arrived at such a conclusion basing on the oral testimony of P.Ws.1 and 2 and Exs.A1, A2, A3, A4 and A5. A perusal of the record reveals that the Tribunal has assigned cogent and valid reasons to its findings. There are no

grounds much less valid grounds to interfere with the well considered finding of the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased. Accordingly, point No.1 is answered in favour of the petitioners and against the respondents.

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Point Nos.2 and 3:

11. Both the points are interlinked with each other; hence, I am inclined to address these two points simultaneously in order to avoid recapitulation of facts and evidence.

12. Basing on the recitals of Ex.A5 Post-mortem examination report, the Tribunal arrived at a conclusion that the deceased was aged about 46 years. The Tribunal has taken the multiplier as '13' in view of the principle enunciated in **Sarla Verma v DTC**[1]**.** Except the self-served testimony of P.Ws.1 and 2 there is no other convincing evidence to prove the income of the deceased as on the date of the accident. The fact remains that the deceased belongs to a village. It is needless to say that in the villages, womenfolk used to attend cooli works apart from attending domestic works. The services rendered by a housewife cannot be quantified in terms of money. A perusal of the record reveals that the Tribunal has considered various aspects and arrived at a conclusion that the deceased may earn Rs.3,000/- per month even in the absence of documentary evidence. There are no grounds much less valid grounds to interfere with the finding of the Tribunal so far as the monthly earnings of the deceased is concerned. Out of the total income of Rs.3,000/- per month, 1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute

Rs.2,000/- per month and Rs.24,000/- per annum to the family members. The loss of dependency comes to (Rs.24,000/- X 13=) Rs.3,12,000/-. The Tribunal awarded an amount of Rs.10,000/- towards loss of consortium and Rs.15,000/- towards loss of care and guidance. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**[2], and **Kishan Gopal v Lala**[3], the petitioners are entitled to Rs.50,000/- towards conventional damages. Thus the total compensation for which the petitioners are entitled to is Rs.3,62,000/-. The compensation awarded under the above heads would meet the ends of justice.

13. The predominant contention of the learned counsel for the second respondent is that the driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident. The oral testimony of R.Ws.1 and 2 coupled with Ex.B4 (extract of driving licence) clearly reveals that the driver of the crime vehicle had obtained driving licence to drive Light Motor-Non Transport Vehicle and it would be in effect from 13.8.2010 to 14.7.2008. The fact remains that the driver of the crime vehicle was having driving licence to drive LMV-Non Transport as on the date of the accident. The oral testimony of R.Ws.1 and 2 coupled with Exs.B1 and B4 clearly reveals that the vehicle involved in the accident is Light Motor Goods Vehicle. The driving skill required to drive LMV-transport and non transport is one and the same. The fact remains that the driver of the crime vehicle had not obtained badge to drive transport vehicle. It is not the case of the insurance company that proximate cause for the accident is non-holding of transport driving licence by the driver of the crime vehicle.

14. In ***Kulwant Singh v Oriental Insurance Co. Ltd***[4] the Hon'ble apex Court, while dealing with similar question, held as follows:

10. In S. Iyyapan v United India Insurance Co.[5], 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.

As per the principle enunciated in the case cited supra, mere non-obtaining of endorsement on the driving licence by itself would not amount to violation of terms and conditions of policy so as to absolve the liability of the second respondent. The facts of the case on hand are almost identical to the facts of the cases cited supra.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered 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. Accordingly, point Nos.2 and 3 are answered against the insurance company.

16. In the result, MACMA No.9 of 2013 is dismissed and MACMA No.1704 of 2014 is allowed in part. The compensation is enhanced from Rs.3,37,000/- to Rs.3,62,000/-. The enhanced amount of Rs.25,000/- shall carry interest at 7.5% per annum from the date of the petition till realisation. The first petitioner alone is entitled for the enhanced compensation. There shall be no order as to costs in these appeals. Miscellaneous petitions, if any, pending in these appeals,

shall stand closed.

T.SUNIL CHOWDARY, J

August 07, 2015

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[1] (2009) 6 SCC 121

[2] 2014 ACJ 1430

[3] (2014) 1 SCC 244

[4] 2014 ACJ 2873

[5] (2013) 7 SCC 62