HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 2809 OF 2005

Judgment:

The instant appeal is preferred by the fourth respondent – United India Insurance Company Limited, aggrieved by the order, dated 14th July 2004, in MVOP No.593 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur, requesting to set aside the order so far as the appellant is concerned on the ground that the crime was registered against the driver of the another vehicle that being the jeep and, therefore, only the owner and insurer of the said jeep are liable to pay compensation and the Tribunal went wrong in fixing the liability on the appellant also.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 17.01.2000 at about 4.00 PM, one Orsu Ramaiah was travelling in a jeep bearing registration No.AP-7D-6345 and when it reached the accident spot, a bus hired to the fifth respondent - APSRTC by the third respondent, which was insured with the fourth respondent – Insurance Company, came in opposite direction and there was collision between both the vehicles, due to which, the said Orsu Ramaiah sustained severe injuries and he was shifted to Hospital. He succumbed to injuries while undergoing treatment. The petitioners, claiming that he was 32 years old on the date of accident and was a commission agent in supply of house construction material, earning Rs.10,000/- per month, sought a total sum of Rs.4,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The claim, thus, was laid by the legal representatives of the deceased, who are the wife, children and mother of the deceased.

4. Before the Tribunal, the respondents 1 and 3 who are owners of both the vehicles remained *ex parte*. The respondents 2 and 4 – Insurance Companies and the fifth respondent - APSRTC contested the claim. They raised various pleas in their respective counters including the driver of the jeep not holding valid and effective driving licence and also that the claim was excessive. The fifth respondent, stating that it hired the bus from the third respondent under an agreement and, therefore, only the fourth respondent – Insurance Company being the insurer is liable to pay the compensation, sought to exonerate it.

5. The Tribunal framed three comprehensive issues as follows.

> "1. Whether the accident occurred due to the rash and negligent driving of either jeep No.AP-7D-6345 or Bus No.AP 16W 8393 by its respective drivers or by both?
>
> 2. Whether the petitioners are entitled to compensation and if so, to what amount, from whom?
>
> 3. To what relief?"

6. The Tribunal also framed the following additional issue No.1.

> "Whether the third respondent violated the terms and conditions of the policy and whether the fourth respondent abstained from its liability?"

7. During enquiry, the petitioners examined PWs.1 and 2 and marked Exs.A1 to A5. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B1 to B4 were marked.

8. The Tribunal, having appraised the evidence on record, held issue No.1 in favour of the petitioners by recording a finding that on account of collision between both the vehicles the accident had occurred. On additional issue No.1, the Tribunal recorded a finding against the fourth respondent – Insurance Company holding that the fourth respondent – Insurance Company failed to prove that the driver of the hired bus had no valid and effective driving licence at the time of

accident and, thus, it held that there was no violation of the terms and conditions of Ex.B1 policy issued to the bus hired by the fifth respondent- APSRTC. On issue No.2, the Tribunal, by referring to the judgments rendered by this Court, taken the notional income at Rs.15,000/- per annum, as the petitioners failed to prove that the deceased was deriving Rs.10,000/- per month as contended, applied the multiplier '17' taking the age of the deceased as 32 years and deducted 1/3rd towards his personal expenses and arrived the loss of dependency at Rs.1,70,000/-. Besides the same, the Tribunal has granted Rs.25,000/- towards consortium, Rs.3,000/- towards funeral expenses and conveyance charges and Rs.10,000/- towards loss of estate, making a total of Rs.2,08,000/- and fixed the liability on respondents 1, 2, 4 and 5. The Tribunal also granted interest at 9% p.a.

9. Challenging the aforesaid award the instant appeal is preferred by the insurer of the bus hired to APSRTC contending in the grounds that the Tribunal went wrong in rejecting the evidence of RW.1 and contents of Exs.A1 and A2, which would reflect that on account of rash and negligent driving of the driver of the jeep the accident had occurred. The second ground is that the Tribunal applied wrong multiplier factor and the Tribunal ought to have applied the multiplier '14' instead of '17'. The third ground is that the Tribunal awarded exorbitant amount of Rs.25,000/- towards consortium. Another ground is that the interest awarded by the Tribunal at 9% p.a., is excessive when compared to the interest given by the Nationalised Banks on term deposits.

10. Heard Sri N.J. Sunil Kumar, learned Standing Counsel for the appellant – Insurance Company and Sri A. Rajendra Babu, learned counsel for the respondents 1 to 5/claimants. No representation for the 10th respondent - APSRTC. Though, notice was served on

respondents 7 to 9, none appears. Respondent No.6/claimant died during the pendency of the Original Petition itself.

11. Learned counsel for the appellant would submit that despite Exs.A1 and A2 reflecting rash and negligent driving attributed to the driver of the jeep and even RW.1 asserting the same, the Tribunal has tendered finding otherwise fastening liability on the appellant - Insurance Company even and, therefore, that finding recorded by the Tribunal is incorrect and liable to be set aside. Concerning the quantum of compensation granted by the Tribunal, the learned counsel would submit that higher multiplier was applied. In regard to rate of interest, learned counsel would submit that the claimants are entitled to interest at 7.5% p.a., as per the decisional law and, thus, sought to set aside the order, so far as the appellant – Insurance Company is concerned.

12. On the other hand, learned counsel for the respondents 1 to 5/claimants would submit that the appellant - Insurance Company cannot absolve its liability and, in fact, the evidence of RW.1 would show that there was a collision of both the vehicles and, in the absence of proper material being placed on record, the Tribunal recorded a finding that on account of direct collision of two vehicles the accident had occurred, therefore, fixing liability on all the parties i.e., respondents 1, 2, 4 and 5 cannot be faulted with.

13. Perused the order under challenge and the evidence on record. Though, the evidence of RW.1 is not that material in resolving on which of the drivers rash and negligent driving can be thrust, still, in his cross-examination he makes a positive admission that on account of collision only the accident had occurred. As seen from the material placed on record, the copy of scene of occurrence report is not finding place, nor the rough sketch of scene of occurrence. The appellant herein ought to have secured the same and filed before the Court to

show that, though, there was collision between two vehicles, but on account of rash and negligent driving of the driver of the jeep alone the accident had occurred. In such an event, the finding recorded by the Tribunal cannot be found fault with. Therefore, the same is confirmed.

14. Concerning the compensation determined by the Tribunal, the Tribunal, in fact, taken notional amount based on II Schedule to Section 163-A of the Act, though, there has been assertion on the part of PW.1 to show that the deceased was working as commission agent supplying house construction material. Even concerning the multiplier, it is no doubt true that multiplier '16' is applicable for the age group of persons between 31 and 35 years, but the multiplier '17' was applied by the Tribunal. However, since the dependents are numbering '5', the deduction towards personal expenses ought to be 1/4th, in view of the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]. When viewed in that direction, certainly, the amount awarded by the Tribunal, including the amount of Rs.25,000/- towards loss of consortium, cannot be construed as excessive or arbitrary. Thus, there is absolutely no merit in the instant appeal so far as liability fixed on the appellant is concerned and even the determination of compensation is concerned.

15. Learned counsel for the respondents 1 to 5/claimants, while placing reliance on the decision of the Hon'ble Apex Court in **Managing Director, KSRTC v. New India Assurance Company Limited (Civil Appeal Nos.5293 and 6641 of 2010, dated 27.10.2015)**, submitted that not only the Insurance Company but also the Transport Corporation, if in case the vehicle is hired, are liable to pay compensation jointly and severally. The observations contained in paragraph '34' would run thus:

> "34. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly

> and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer."

16. Concerning the rate of interest, the Tribunal has granted interest at 9% p.a. The same requires to be reduced to 7.5% p.a., in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2].

17. Accordingly, the instant MACMA is allowed in part reducing the rate of interest from 9% p.a., to 7.5% p.a., on the compensation amount as awarded by the Tribunal. There shall be no order as to costs.

18. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 31.12.2015
Nsr

[1] (2009) 6 SCC 121

[2] **2013ACJ1403 = 2013(4)ALT35**