

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

+ M.A.C.M.A No.2284 of 2009

%21.01.2015

Between:

National Insurance Co. Ltd.,

Rep. by its Branch Manager, Tirupathi.

....

Appellant

AND

P.R. Subramanyam

and others.

....

Respondents

! Counsel for Appellant

: Sri K. Sita Ram

^ Counsel for Respondent No.1

: Sri P.R. Subramanyam

< Gist:

> Head Note:

? Cases referred:

1) 2014 ACJ 526 (SC)

2) 2013 ACJ 1253 (SC)

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2284 of 2009

JUDGMENT:

Challenging the Award dated 01.02.2008 in
M.V.O.P.No.430 of 2006 passed by the Chairman, M.A.C.T-

cum-III Additional District Judge, Tirupati (for short “Tribunal”), the 2nd respondent in OP/National Insurance Company Limited, preferred the instant MACMA.

2 a) On factual side, on 10.12.2005, when the deceased —P.S.Venkata Sai, along with his mother and sister was travelling in APSRTC bus bearing No. AP 11 Z 629 and when it reached Subba Naidu Kandriga Cross Road at about 12:00 noon, a Milk van bearing No.TN 20 T 9793 came in opposite direction and both vehicles collided each other due to rash and negligent driving by the drivers of both the vehicles. In the resultant accident, the deceased, his mother and sister died on the spot. It is averred that the accident was occurred due to the negligence of drivers of both the vehicles and due to abrupt death of deceased, the claimant lost future hopes on the boy. With these averments, the father of the deceased filed M.V.O.P.No.430 of 2006 under Sec.163-A of Motor Vehicles Act, 1988 (for short “M.V.Act”) against respondents 1 to 3, who are owner, insurer of the Milk Van and owner of APSRTC bus and claimed Rs.2,50,000/- as compensation under different heads.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company contended that accident was occurred due to the head on collision between the van and APSRTC bus and the driver of the bus was negligent. R.2 contended that the police foisted a false case against the driver of the van under the influence of the bus passengers and

as such, R.2 is not liable to pay compensation. R.2 disowned its liability also on the ground that the R.1 violated the terms and conditions of the policy as driver of the van had no valid driving licence at the time of accident and the van has not permit. Thus, R.2 prayed to dismiss the O.P.

d) Respondent No.3/APSRTC contended that the accident was occurred due to the negligence of the driver of the van and criminal case was also registered against him and as such, it is not liable to pay any compensation. R.3 submitted that Sri T.N. Bhushanam was the driver and Sri P.R. Chandra was the conductor of the bus on 10.12.2005 and the bus was going slowly on the left side margin of the road due to rain and when it reached Subba Naidu Kandriga Cross, a van came in opposite direction at high speed and the driver lost control over it and dashed the front side portion next to driver's seat from third seat and dragged upto six rows and six rows of seats were detached from the bus and the deceased and some others who were sitting in those seats died on the spot. R.3 contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

e) During trial, PW.1 was examined and Exs.A.1 to A.4 were marked on behalf of the claimant. Policy copy filed by respondent No.2 was marked as Ex.B.1.

f) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of

Rs.1,80,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of income	Rs.1,50,000-00
Funeral expenses	Rs. 10,000-00
Loss of estate	Rs. 20,000-00

Total	Rs.1,80,000-00

The Tribunal exonerated the respondent No.3 and fastened the liability on respondents 1 and 2.

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 K.Sita Ram, learned counsel for appellant/ Insurance Company and Sri P.Govind Reddy, learned counsel for respondent No.1/claimant. Though notice to R.2 and R.3 was served but there is no representation on their behalf, hence treated as heard.
- 5) Learned counsel for appellant/ Insurance Company attacked the award on two main grounds:
- a) Firstly, he contended that the accident was occurred purely due to the fault of the bus driver as the bus was overloaded with the passengers and inspite of it, the bus driver drove the bus at high speed and in a rash and negligent manner and dashed the milk van which was going on extreme left side of the road in a slow manner and hence the Tribunal

ought to have fixed the entire liability on the 3rd respondent/ APSRTC. He alternatively argued that in any event it is a case of head on collision between the two vehicles and as such the Tribunal atleast ought to have apportioned the liability between the two vehicles.

b) Secondly, learned counsel argued that the compensation was excessive inasmuch as the Tribunal took high multiplier of '15' and thereby compensation was unduly hiked and hence it needs to be reduced. He thus prayed to allow the appeal.

6) Per contra, learned counsel for 1st respondent/claimant supported the award arguing that the documentary evidence particularly Motor Vehicle Inspector's Report filed in connected M.V.O.P. No.428 of 2006 (MACMA No.2447 of 2009) would clinchingly show that fault in the accident rested with milk van driver alone and therefore, the Tribunal rightly fixed the liability on respondents 1 and 2 in the O.P. He further argued that the Tribunal rightly took the notional income of the deceased as Rs.15,000/- and multiplier as '15' following the Second Schedule of the M.V.Act since the claim is under Section 163-A of M.V.Act and there is no wrong in it and hence there is no need to revise the compensation. He thus prayed to dismiss the appeal.

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

"Whether the award passed by the Tribunal is factually and

legally sustainable?”

8) **POINT**: The first contention of appellant is concerned, it must be said that learned counsel for appellant/ Insurance Company made a feeble attempt firstly to project as if there was no fault of the van driver and secondly that it was a case of head on collision between the two vehicles and hence if not resting entire liability on the RTC bus driver, it should be apportioned between the two vehicles. On a perusal of the evidence on record, I hold that the above argument does not have teeth. It is a claim under Section 163-A of M.V.Act and so the claimant need not establish the fault of the driver concerned. Perhaps in that view of the matter, the claimant has not examined any eye witness to the accident. He examined himself as PW.1 and produced Exs.A.1 to A.4—documentary evidence. Admittedly, PW.1—the claimant is not an eye witness. Therefore, obviously we have to fall back on the documentary evidence to know which of the two drivers was responsible for the accident.

a) Ex.A.1—FIR was lodged by the bus conductor. Narrating the manner of occurrence of accident he mentioned that when the bus reached Subba Naidu Kandriga cross road at about 12:00 noon, the offending van which was coming from Uthukota came in the opposite direction being driven at high speed by its driver and dashed on the right side body part of the bus and thereby about 75% of the right side portion of the bus was cut and due to the impact of the hit, two ladies, one male and two

children died on the spot. In Ex.A.3—Inquest Report also the inquestdars opined that the van driver was responsible for the accident. Apart from these documents, the claimant in connected M.V.O.P.No.428 of 2006 (MACMA No.2447 of 2009) got marked Motor Vehicle Inspector's report as Ex.A.5. Since the said MACMA is also coming for judgment along with the present MACMA, this Court happened to peruse the Ex.A.5—Motor Vehicle Inspector's report. In the considered view of this Court, the observations made by M.V. Inspector are very much pertinent to clinch the issue. In his report, the M.V. Inspector narrated that the road was 32 feet wide with black top with a margin of 2 feet on either side. He further narrated that there is a road curve at the accident spot which is not a blind curve and there is no gradient. Regarding the conditions of the vehicles, he narrated that the milk van L.G.C is concerned, propeller shaft, radiator, fan, chasis were damaged and wind-sheet glass broken. Bus is concerned, wind sheet glass, Engine, Radiator, fan, **right side body**, headlights, indicators damaged. He mentioned that damage to both vehicles could not be fully estimated as the vehicles were interlocked. The brake system of both vehicles was found in order. He opined that the accident was not due to any mechanical defect of the vehicles.

b) The above narration goes to show that sofaras the topography of the scene of accident is concerned, the road has a plain curve at the accident spot and it was not a blind curve to confuse the drivers of either side. The accident it appears,

occurred while the vehicles were negotiating the curve. The right side portion of the bus behind the driver's seat upto 5 or 6 rows was damaged. Admittedly, driver's seat was not damaged and driver was also not injured in the accident. It would indicate that the accident was not resulted due to head on collision between the two vehicles as contended by the appellant/Insurance Company. On the other hand, the accident was occurred while the vehicles were crossing at the bend of the curve and in that process the milk van driver went and scratched some rows of the seats behind the bus driver. So the M.V. Inspector's report supports the version of bus conductor in FIR and the inquestdars in Ex.A.3—Inquest report. Thus it is clear that the milk van driver was solely responsible for the accident and this was confirmed by the investigating agency also as is evident from Ex.A.2—charge sheet. Hence the first argument of the appellant cannot be countenanced.

9) Sofaras the quantum of compensation is concerned, the argument of appellant is that the Tribunal erred in selecting '15' as multiplier and thereby compensation was unduly increased. I am unable to accept this argument. It is a child death case. As per the claim petition and the evidence of PW.1, the deceased-boy—P.S. Venkata Sai was 10 years old and studying 5th class in Jems English Medium School, Puttur. In Ex.A.3—Inquest report and Ex.A.4—Post mortem report also the age of the deceased was mentioned as 10 years. This aspect was not challenged by the respondents in the cross-

examination of PW.1. So it can be safely concluded that the deceased was 10 years old and studying 5th class by the time of his death. Regarding computation of compensation in child death cases, we have two important decisions of Hon'ble Apex Court. In **Puttamma and others v. K.L.Narayana Reddy and another**^[1], the Apex Court while expressing its anguish over Central Government's not amending the Second Schedule of the M.V. Act in view of Section 163-A(3), observed thus:

"Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that the children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988."

a) In the light of above decision with reference to Second Schedule, we have to see whether compensation in this case comes below or above the minimum limits prescribed as above. Since the boy is 10 years old, a suitable multiplier has to be selected. The Apex Court in the case of **Reshma Kumari and others v. Madan Mohan and another**^[2] held as follows:

"In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table

*in **Sarla Verma vs. Delhi Transport Corporation** {(2009)6 SCC 121} should be followed.”*

b) Following the above, multiplier ‘15’ and notional income of Rs.15,000/- p.a. are to be taken. After deducting 1/3rd, the net annual income comes to Rs.10,000/-. Thus, total compensation for loss of future dependency comes to Rs.1,50,000/-. To this, a sum of Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of estate are added, as granted by the Tribunal. Thus, the total compensation comes to Rs.1,80,000/-. Since this amount is higher than the minimum limit prescribed in **Puttamma’s** case

(1 supra), the same is approved. So at the outset, it must be noted that compensation awarded by the Tribunal is just and reasonable and there is no need to interfere with the same.

10) In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.430 of 2006. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 21.01.2015

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

[\[1\]](#) 2014 ACJ 526 (SC)

[\[2\]](#) 2013 ACJ 1253 (SC)