THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

M.A.C.M.A.Nos.271 of 2011 & 605 of 2008

COMMON JUDGMENT: *(per Hon'ble Sri Justice M. Seetharama Murti)*

These two appeals arise out of an award dated 03.10.2007 in M.V.O.P.1 of 2005 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District.

1.1 Having not been satisfied with the quantum of compensation awarded by the Tribunal, the claimants had preferred the appeal-MACMA 605 of 2008.

1.2 The Insurance Company had filed the other appeal-MACMA 271 of 2011 disowning its liability to pay the compensation and also contending that the compensation awarded is high and excessive.

1.3 Therefore, these appeals were heard together and are being disposed of by this common judgment.

2. In these appeals, the parties shall hereinafter be referred to as 'the claimants', 'the driver', 'the owner-cum-insured' and 'the insurance company' for convenience and clarity.

3. We have heard the submissions of the learned counsel for the claimants, the learned counsel for the owner-cum-insured and the learned counsel for the insurance company. We have perused the material record.

4. The claimants who are the wife, two major unmarried daughters and the aged mother of the deceased, W. S. Ramesh Kumar**,** had filed the claim petition claiming a compensation of Rs.50,00,000/- on account of the untimely death of the said deceased in a motor vehicle accident. The 1st respondent-driver, the 2nd respondent-owner-cum-insured and the 3rd respondent-insurance company with which the TATA Sumo vehicle involved in the accident was insured, had filed written statements resisting the claim of the claimants. After full-fledged trial, the Tribunal had awarded a total compensation of Rs.5,97,214/- to the claimants with interest @ 6% per annum simple from the date of the claim petition till the date of realization and also proportionate costs recoverable from the respondents 2 and 3 jointly and severally. What is to be noted at this stage is that the Tribunal having considered the oral and documentary evidence as regards the manner of accident and further considering the crime record, exhibit A1-the copy of the FIR, exhibit A2-the copy of the inquest report of the deceased, exhibit A3-the post mortem report of the deceased, exhibit A4-the copy of the charge sheet and exhibit A5-the copy of the MVI's report had held that the 1st respondent driver of the Tata Sumo was rash and negligent and was responsible for the accident. Considering the fact that the MVI's report does not support the evidence of RW1-the driver and also taking into consideration the fact that the police investigation had also revealed that the driver of the Tata Sumo, the 1st respondent, was responsible for the accident and hence, the police had charge sheeted him, and further, after analytically examining the relevant evidence on record on this aspect, we find no grounds to interfere with the said finding of the Tribunal. In fact, the said finding is not challenged in the memorandum of grounds of appeal filed by the Insurance Company. In this backdrop, we shall first advert to the principal contentions of the insurance company and the claimants to underscore the scope and ambit of the contentions and then precisely deal with the relevant issues involved in these appeals.

5. The learned counsel for the Insurance Company had first contended that the licence held by the driver of the TATA SUMO vehicle is a fake licence and that, in any view of the matter, the said driver had only held, at the time of accident, a licence authorising him to drive a light motor vehicle (non-transport) and that the driver did not hold a valid and effective licence to drive the Tata Sumo, which is a Transport vehicle, and that the owner-cum-insured had violated the terms and conditions of the policy in entrusting the vehicle to such a driver and that the Tribunal having not considered the said defences of the insurance company had erred in fastening the liability on the insurance company to pay the compensation awarded to the claimants. He had alternately contended that the Tribunal ought to have directed the insurance company to first pay the compensation and then recover the same from the owner-cum-insured. He had next contended that the Tribunal had not correctly appreciated the facts and evidence and had not correctly determined the multiplicand and the multiplier and that the compensation awarded by the Tribunal is high and excessive. Per contra, the learned counsel for the claimants while supporting the award on all other issues had contended that the Tribunal had erred in awarding a meagre compensation by not correctly fixing the income of the deceased and multiplier and that the Tribunal had not awarded adequate compensation amounts under all the relevant conventional heads.

6. The points that arise for determination in these appeals are-

> **1) Whether, as contended by the insurance company, the driver of the Tata Sumo did not hold a valid and effective driving licence to drive the said vehicle at the time of the accident? And, whether, as contended by the insurance company, there is violation of terms and conditions of the policy and also the provisions of law by the insured? And if so, whether the insurance company is entitled to be exonerated from the liability to pay the compensation to the claimants?**
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> **2) Whether the compensation awarded is not just and fair? And, if so, what shall be the just and fair compensation to be awarded to the claimants?**

3) To what relief?

7. <u>POINT No.1:</u>

7.1 The vital question is – 'Whether, at the time of the accident, the driver of the Tata Sumo did not hold a valid and effective driving licence to drive the said vehicle? And, if so, whether the insurance company cannot be saddled with the liability to pay the compensation to the claimants?'

7.2 It is apposite to first refer to the defence of the Insurance Company in the written statement, which is as follows: "It is learnt that the 1st respondent (driver) is not having valid and effective driving licence at the time of the accident and so he is disqualified from driving the Tata Sumo. The officials of the 2nd respondent (owner-cum-insured) knowing that the 1st respondent is not having valid driving licence have entrusted the vehicle to him and allowed him to drive the same. So this amounts to violation of terms and conditions of the policy; and, hence, this respondent is not liable to pay any compensation to the claimants even otherwise."

7.3 Thus it is not pleaded in the defence that the driver of the Tata Sumo held a fake driving licence. PW1, the 1st claimant, is the wife of the deceased. When it was suggested to her that the driver of the vehicle did not hold a valid and effective driving licence, she had denied the said suggestion. The other part of the pleaded defence that 'the officials of the 2nd respondent (owner-cum-insured) had entrusted the vehicle to the driver and had allowed him to drive the vehicle knowing that he is not having a valid driving licence' is not even suggested to PW1. PW2 is the Pay Officer of the Andhra Pradesh Power Generation Corporation Limited ('the A P GENCO' for short) in which the deceased had worked as a Senior Accounts Officer till his death on account of his involvement in the pleaded accident. PW2 had testified that he had also travelled in the same Tata Sumo at the time of the accident and that he had witnessed the accident. In the cross-examination done for the insurance company it was not suggested to PW2 that the driver of the Tata Sumo did not hold a valid and effective driving licence. PW2, the official of the A P GENCO was not at all cross examined on this aspect. The driver of the Tata Sumo was examined as RW1. He had asserted that he had held a valid driving licence to drive an LMV and that Tata Sumo is a light motor vehicle. In his evidence, exhibit B2-his driving licence was marked. In the cross examination done for the Insurance Company when it was suggested to him that he did not possess a driving licence to drive LMV at the time of accident he had denied the said suggestion. It was elicited that by virtue of exhibit B2 he is authorised to drive a LMV. It was not suggested to him that the licence held by him is a fake licence. RW2 is the officer of the Insurance Company. He had stated that exhibit B2 is the driving licence of the driver (RW1) and that the same did not authorise him to drive the Tata Sumo involved in the accident, which comes under the category of LMV and that the officials of the 2nd respondent (owner-cum-insured), who had travelled in the said vehicle, had allowed the 1st respondent/driver to drive the same knowing that he is not having valid driving licence and that therefore, the terms and conditions of the policy were violated. However, the said defence was not suggested to PW1 as already noted. When RW1, the driver had stated that the Tata Sumo is a light motor vehicle no suggestion to the contra was given to him. In the evidence of RW2, exhibit B4-the certificate of driving licence particulars of a driver by name Yesu Babu, issued by the Additional Licensing Authority, Visakhapatnam was exhibited. The same was not proved by examining any person from the office of the said Additional Licensing Authority. The name of the 1st respondent/driver in the instant case is S. Venkata Rao and not Yesu Babu.

7.4 Be it noted that the subject accident had occurred on 20.08.2003. Exhibit B2-the Duplicate copy of the driving licence issued by the Additional Licensing Authority, Visakhapatnam would show that that the original licence was surrendered; and that the driving licence authorising to drive LMV was valid with effect from 12.08.1999 to 11.08.2002 and that the licence to drive a motor vehicle other than transport vehicle is valid from 15.06.1987 to 14.06.1990. On the reverse of exhibit B2 there is an endorsement issued by the Additional Licensing Authority, Visakhapatnam. The same would show that the driver was authorised to drive heavy transport vehicle with effect from 05.10.2002 and that the driver had produced driving school certificate issued by Krishna Motor Driving School, Visakhapatnam and that the driving licence is renewed from 05.10.2002 to 04.10 2005. RW2 had pleaded ignorance when it was suggested to him that heavy motor vehicle licence authorises the driver to drive LMV also.

7.5 There is neither pleading nor proof in support of the contentions of the insurance company that the driving licence held by the driver of the Tata Sumo vehicle is a fake licence. The evidence on record, which is carefully analysed supra, does not support the contentions that the driver of the Tata Sumo did not hold a valid and effective driving licence to drive the said vehicle at the time of accident. Therefore, all the contentions advanced on behalf of the insurance company have no acceptable merit. Viewed thus, this Court holds that the driver of the Tata Sumo vehicle held a valid and effective driving licence at the time of accident to drive the said vehicle. It is admitted that the said vehicle was duly insured with the insurance company and that the validity period of the policy is from 02.02.2003 to 01.02.2004, as is evident from exhibit B3-the copy of the certificate of insurance with schedules. The said policy, which is a private car package policy, covers the risk of the deceased is not in dispute. Therefore, it follows that the insurance company is not entitled to disown its liability. Since, the issues involved under point no.1 are accordingly answered based on facts and evidence it is not necessary to refer to any rulings.

7.6 Having regard to the reasons supra, we hold that the Insurance Company is jointly and severally liable along with the owner-cum-insured of the Tata Sumo to pay the compensation to the claimants.

8. POINT No.2:

8.1 The case of the claimants in regard to the claim for compensation, in brief, is this: **“**As on the date of his death due to his involvement in the subject accident, the deceased was of 55 years of age and used to work as a Senior Accounts Officer in A.P. Genco, Mothugudem and used to draw a monthly salary of Rs.38,000/- and contribute the same for the maintenance of the family consisting of his wife aged 50 years, daughters aged 23 Years and 21 years respectively and mother aged 70 years, who are the claimants. The daughters are educated, unemployed and unmarried. On account of the death of the deceased in the accident, the claimants had lost their bread winner and had suffered pain and mental agony. They had lost their only source of livelihood.”

8.2 Per contra, the respondents 2 and 3 had contended that the deceased was aged about 58 years and had only a balance service of ten months or less than one year at the time of his death and that the compensation claimed is high and excessive. They had thus, resisted the claim of the claimants by generally and specifically denying the relevant material allegations and had put the claimants to strict proof of their contentions and entitlement to the compensation claimed.

8.3 The 1st claimant-**PW1** had deposed in line with case pleaded in the claim petition and had stated that she does not know about any deductions from the salary of the deceased; but, had denied the suggestion that the deceased was not drawing Rs.36,345/- per month. **PW2** is the pay officer of the Andhra Pradesh Power Generation Corporation Limited (‘the A P GENCO’, for short) in which the deceased had worked as a Senior Accounts Officer till his death. While corroborating the version of the PW1 about the employment of the deceased as Senior Accounts Officer in AP GENCO, he had exhibited the last pay certificate-exhibit A6 of the deceased and had stated that the full pay particulars of the deceased with details of deductions will be available in the Mothugudem office. In his cross examination it was elicited that the deceased had drawn ‘generation station allowance’ of Rs.4,129-50ps during the period he had worked in generation station and that an employee of AP Genco draws ‘Hydel station allowance’ @ 35% of the basic pay while working in Hydel Station and draws 5% of the Basic Pay as allowance while working at a Thermal Station and that the deceased had worked at Mothugudem Thermal

Station at the time of his death and that the retirement age in the department is 58 years. There was no other cross examination and the age of the deceased was also not disputed in the cross examinations of PWs1 and 2. Exhibit A6 on a perusal would show that the gross last monthly pay of the deceased was 36,345/- and that his basic pay, stagnation Increment, FPI, DA and GA were Rs.29,110/-, Rs.1,720/-, Rs.60/-, Rs.1,326/- and Rs.4,129-50/- respectively. However, exhibit B1-photostat copy of the salary particulars of the deceased from 16/2/2003 to 20/08/2003 on a perusal would show that the Gross Salary of the deceased in the month of March, 2003 was 35,449/- and that his Basic Pay, FPI, DA and GA were Rs.29,970/-, Rs.60/-, Rs.1,289/- and Rs.4,130/- respectively and that the deductions towards PT (Profession Tax), GIS and Income Tax were Rs.200/- Rs.120/- and Rs.5,000/- and that his GPF and LIC contributions were Rs.7,289/- and Rs.127.50 ps respectively and that his net salary was Rs.22,712.50ps. In July 2003 his net salary was Rs.22,112.50ps while in the months of April to June 2003 his net salary as per exhibit B1 respectively was Rs.15,712.50ps, Rs.15,712.50ps and Rs.16,112.50ps. Having regard to the said evidence on record, the Tribunal had determined the monthly income of the deceased at Rs.16,590-15 paise. Though it is pleaded in the memorandum of grounds of appeal of the insurance company that the Tribunal ought to have seen that the deceased was having only ten months of service by the date of the accident and that the deceased was evidently more than 57 years of age and it was sought to be contended on behalf of the insurance company that as on the date of the accident, the balance period of service of the deceased was less than a year, there is no evidence much less credible evidence to support this contention. However, the fact remains that the balance of service of the deceased as on the date of his death was only a few years. The age of retirement in the organization of the deceased is 58 years. Though an addition of 15% of actual salary to the actual salary income of the deceased towards future prospects has to be made, where the deceased was between the age group of 50 to 60 years, in our well considered view as the deceased was of advanced age and was likely to retire within a period of less than two years, we consider that this is a fit case involving special circumstances to make a departure and take only the actual income at the time of death after giving allowance to compulsory/statutory deductions like income tax, professional tax and contribution towards Group insurance etcetera. When there are two documents showing the salaries of the deceased at different figures, and in one document showing the salary particulars of the deceased during the period of a few months there are differences and when there is no consistency in the salary figures, the claimants who could have placed the best evidence to prove the actual gross salary and detailed particulars of salary of the deceased, did not avail the opportunity to adduce credible evidence as to the actual gross and net salaries with details thereof of the deceased. Therefore, we are inclined to accept the income of the deceased at Rs.16,590-15 ps as determined by the Tribunal without any addition towards future prospects as the balance service of the deceased is about two years. Accordingly, his annual income works out to Rs.199,081.80 ps. After rounding it off to Rs.1,99,080/-, a 1/3rd is to be deducted towards the personal and living expenses of the deceased as the claimants are four in number. If so deducted, the annual loss of dependency works out to Rs.1,32,720/- (Rs.1,99,080–Rs.66,360/-). Therefore, the multiplicand as determined supra is Rs.1,32,720/-.

8.4 Coming to the multiplier, the age of the deceased at the time of his death was 55 years, as per the pleadings and the evidence of PW1. However, in his P.M. Examination Report-exhibit A3 his age was mentioned as 56 years. Considering his age as 56 years, the appropriate multiplier is to determined as per the column 4 in the decision in ***Sarla Verma and Others vs. Delhi Transport Corporation and another*** case. Accordingly, the appropriate multiplier to be applied in the instant case is determined as ‘9’ (nine).

8.5 Accordingly, the compensation under the head loss of dependency to which the claimants are entitled to is Rs.11,94,480/- (Rs.1,32,720/- X 9).

8.6 In the decision in **Anjani Singh and Ors. V. Salauddin & Ors,** the Hon’ble Supreme Court by following the ratio in a three Judge Bench decision in **Rajesh and Ors. V. Rajbir Singh and Ors** had awarded in that case Rs.25,000/- towards funeral expenses and Rs.1,00,000/- each towards ‘loss of love and affection’ for the children and ‘loss of consortium’ to the wife of the deceased. Now it is pertinent to refer to the decision in the case of **Rajesh and Others vs.**

Rajbir Singh and others (3 supra), wherein, the Hon'ble Supreme Court held to the following effect:

> **"We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "Funeral expenses" does not mean the fee paid in the crematorium or the fee paid for the use of space in the Cemetery and that there are many other expenses in connection with the funeral, besides expenses associated with religious practices and conventions and all those religious practices and conventions are very expensive."**

The Hon'ble Supreme Court also held that it would only be just and reasonable that the Courts award at least Rs.1,00,000/- (Rupees One Lakh Only) towards loss of consortium. In the above precedent the Hon'ble Supreme Court had further awarded Rs.1,00,000/- (Rupees One Lakh Only) towards loss of care and guidance of minor children while awarding Rs.25,000/- (Rupees Twenty Five Thousands Only) towards funeral expenses. In the above precedent, the petitioners are the widow and the minor children of Bijender Singh, the deceased, who was aged about 33 years at the time of the accident. Following the precedential guidance, a sum of Rs.1,00,000/- (Rupees One Lakh Only) is awarded to the first claimant towards loss of consortium and Rs.25,000/- (Rupees Twenty Five Thousands Only) is awarded towards funeral expenses. Further, a sum of Rs.1,00,000/- (Rupees One Lakh Only) is awarded towards 'loss of love and affection' as the daughters are unmarried at the time of the death of the deceased. Further, Rs.5,000/- (Rupees Five Thousands Only) each is awarded under the two conventional heads 'loss of estate and transport expenses'.

8.7 Accordingly, the claimants are entitled to the following compensation amounts:

Sl.No.	**Head of compensation**	**Amount(in Rs.)**
(1)	Loss of dependency	11,94,480=00
(2)	Transport	5,000=00
(3)	Loss of consortium	1,00,000=00

(4)	Loss of love and affection	1,00,000=00
(5)	Loss of estate	5,000=00
(6)	Funeral expenses	25,000=00
Total		**14,29,480=00**

(Rupees Fourteen lakhs twenty nine thousands Four hundred and eighty only)

Thus, the just and fair compensation to which the claimants are entitled to as determined supra is Rs.14,29,480/- (Rupees Fourteen Lakhs twenty nine thousand four hundred and eighty only). The rest of the claim is disallowed. However, the Tribunal had awarded compensation of Rs.5,97,214/-. Therefore, it follows that the compensation is enhanced by Rs.8,32,266/. The point is accordingly answered holding that the claimants are entitled to a total compensation of Rs.14,29,480/- instead of Rs.5,97,214/- determined by the Tribunal.

8.8 Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest @ 7.5% per annum simple on the said enhanced compensation amount. On the compensation already awarded, the trial Court had granted interest at 6% per annum simple.

8.9 The enhanced compensation is apportioned as under: 'Rs.4,32,266/- (Rupees Four Lakhs Thirty Two Thousands Two hundred and Sixty six only) to the 1st claimant; Rs.1,50,000/- (Rupees One Lakh Fifty Thousands only) each to the 2nd and 3rd claimants; and Rs.1,00,000/- (Rupees One Lakh Only) to the 4th claimant'.

8.10 Having regard to the facts and circumstances, the insurance company is directed to deposit the enhanced portion of compensation i.e., Rs.8,32,266/- (Rupees Eight Lakhs Thirty Two Thousands Two Hundred and Sixty Six only) with interest at 7.5% per annum simple from the date of the original petition till the date of deposit and also proportionate costs within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. On such deposit of the amount before the Tribunal, the 1st claimant is permitted to withdraw entire proportionate costs and also Rs.2,00,000/- (Rupees Two lakhs Only) for the present; and, the claimants 2,3 and 4 are permitted with draw their entire respective shares of compensation amounts with interests. The Tribunal shall keep the balance compensation amount of the claimant no.1 in a separate fixed deposit in any Nationalised Bank of her choice till the release of the same to her as per the norms applicable.

9. <u>POINT NO.3:</u>

In the result, M.A.C.M.A.No.271 of 2011 filed by the insurance company is dismissed and M.A.C.M.A.No.605 of 2008 filed by the claimants is allowed in part, as indicated above. There shall be no order as to costs.

Miscellaneous applications, if any, pending in these appeals shall stand closed.

K.C.BHANU, J

M. SEETHARAMA MURTI, J

22nd April 2015

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