HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. Nos.1242 of 2009 and 1670 of 2011

COMMON JUDGMENT:

Aggrieved by the Award dated 09.01.2009 in O.P.No.1847 of 2007 passed by the Chairman, MACT–cum–III Additional District Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), both claimants and Insurance Company preferred M.A.C.M.A.No.1242 of 2009 and M.A.C.M.A.No.1670 of 2011 respectively.

2) The facts in brief are that:

a. The claimants are the wife and mother of the deceased—Rangaswamy. On 13.12.2006 at about 7 PM, when the deceased who was a labourer, after attending electrical labour work along with others stood opposite to LIC Office, Kalwakurthy, an auto trolley bearing No. AP 29 U 1497 being driven by its driver in a rash and negligent manner and at high speed and dashed the deceased causing his instantaneous death. The claimants on the pleas that the auto driver was responsible for the accident and that due to abrupt death of deceased they became destitutes, filed OP No.1847 of 2007 against respondents 1 and 2, who are the owner and insurer of the crime auto and claimed Rs.4,50,000/- as compensation under different heads.

b. First respondent remained *ex parte*.

c. R2–Insurance Company while denying all the material averments made in the petition contended that there was no fault of auto driver and accident was occurred due to negligence of deceased himself and R2 has no liability to pay compensation.

e) On appreciation of evidence, the Tribunal held that the auto driver was responsible for the accident and awarded Rs.3,80,000/- as compensation under different heads as follows:

Loss of dependency Rs. 3,71,000.00

Loss of consortium Rs. 9,000.00

Total Rs. 3,80,000.00

Hence the appeals: (1) MACMA No.1242 of 2009 by the claimants challenging the quantum of compensation as inadequate and (2) MACMA No.1670 of 2011 by R2/Insurance Company questioning the propriety of fastening liability on it.

3) <u>MACMA No.1242 of 2009</u>: Heard arguments of Smt.A.Chaya Devi, learned counsel for appellants/claimants in MACMA No.1242 of 2009 and Sri K.Suresh Reddy, learned counsel for R2/Insurance Company. Notice sent to R1/owner unserved.

<u>MACMA No.1670 of 2011</u>: Heard arguments of Sri K.Suresh Reddy, learned counsel for appellant/Insurance Company. Notice sent to R1 to R3 not yet returned.

4) The parties in these two appeals are referred as they arrayed before the lower Tribunal.

5a) Learned counsel for appellants/claimants while challenging the adequacy of compensation argued that the Tribunal ought to have selected multiplier as provided by the Honourable Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***. She further argued that Tribunal did not award any compensation towards funeral expenses and in view of the same, the compensation was drastically reduced. She thus prayed to allow the claimants appeal.

b) Sofaras the counter appeal of Insurance Company is concerned, learned counsel argued that merely because the Insurance

Company issued notice to 1st respondent to produce his licence particulars and he failed to respond that cannot be a ground to exonerate the Insurance Company from its liability. She vehemently argued that since Insurance Company took the plea that owner committed the breach i.e. he drove the vehicle without having licence, the burden is heavy on Insurance Company to establish this aspect. Mere issuing notice will not exempt it from its liability. She thus prayed to dismiss the counter appeal.

6) Whereas learned counsel for Insurance Company argued that in this case the owner and driver of the auto trolley is one and the same and the Insurance Company issued notice under Ex.B2 asking him to produce his driving licence but he consciously failed to do so which implies that he had no driving licence. Since he committed breach of the policy, Insurance Company can repudiate its liability. Regarding the quantum of compensation, he argued that the same was just and reasonable and there is no need to interfere with the same. He thus prayed to allow his appeal and dismiss the claimants appeal.

7) In the light of above rival arguments, the point for determination in these two appeals is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **POINT**: Accident, involvement of auto trolley bearing No.AP 29 U 1497 and death of the deceased are admitted facts. The liability of Insurance Company and quantum of compensation are two main aspects involved in these two appeals.

a) Sofaras liability is concerned, the Tribunal held that merely because the Insurance Company issued notice to R1 and he failed to respond cannot be a ground to exonerate the Insurance Company from its liability towards third party that too when the driver was not booked under MV Act as per Ex.A5—charge sheet. The said finding is now challenged by the Insurance Company. In this case, the driver and owner of the auto trolley is one and the same. Under Ex.B2, the Insurance Company issued notice to him to produce his driving licence particulars and other particulars of the vehicle and police record, but he failed to produce the same. Now, the crucial point is whether on that count an adverse inference can be drawn against the owner-cum-driver to the effect he had no valid driving licence at the time of accident and he breached the policy and thereby exonerate the Insurance Company. To answer this aspect it is pertinent to refer two important judgments i.e. judgment of the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH*** and judgment of this High court in ***THE NATIONAL INSURANCE COMPANY LIMITED REP. BY ITS DIVISIONAL MANAGER V. PARITAL VENKATESWARLU***.

9) In ***Swaran Singh***'s case (2 supra) the Honourable Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

a. Fake driving licenses of the driver.

b. Driver not having licence whatsoever.

c. No renewal of driving licence as on the date of accident.

d. License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.

e. Driver holding only a learner's licence.

The Apex Court after discussing various issues involved in this regard, summarized its findings thus:

a. Firstly establish that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.

b. Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Even upon establishing the above conditions by the Insurance Company, the Tribunal can direct that the insurer to pay and recover compensation amount from the insured.

10) The above decision of Apex Court was relied upon by the learned single judge of this Court in ***Parital Venkateswarlu***'s case (3 supra). In that case also, the plea of insurance company was that the driver of the motor cycle had no valid driving licence and the driver failed to produce the licence pursuant to the notice got issued by the appellant/insurance company under Ex.B2. The contention of the appellant/Insurance company in that case was considered by the learned Judge in the light of the ratio in ***Swaran Singh*** (2 supra). Ultimately, learned judge held thus:

> "*Coming to the matrix of the case, as discussed hereinabove, the evidence is not clear that the driver of the motor vehicle by name Sudheer was not having any licence at all. It is no doubt true that the second respondent-owner did not respond to the notice got issued by the appellant insurer for causing production of the licence. That will not absolve the insurer from discharging its obligation to show before the Court that the owner has breached the condition of policy of possessing valid driving licence by the driver. It may be reiterated here that the insurer can absolve its liability only when it was an admitted case that the driver did not hold any licence at all and the owner allowed consciously the said driver to drive the vehicle, then only, as held by the Apex Court in para 82 in Swaran Singh's case, the insurer can avoid its liability. It is not relieved of its burden from proving that it was not only a case where the driver had no valid driving licence at the appropriate time, but also a case where the owner breached the condition of the policy in regard to the valid driving licence by the driver. The insurer must show that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver. Such a proof is not coming forth in the instant case."*

Accordingly, he dismissed the contention of the Insurance Company and held it jointly and severally liable to pay compensation along with owner.

11) When the ratio of the above two decisions is applied to the instant case, it is true that Insurance Company issued notice to R1 who is the owner-cum-driver of the vehicle to produce his driving licence and he failed to respond. However, on that count Insurance Company cannot be exonerated from its liability towards third party victim. The 1st respondent was not booked for any offence under MV Act except for the offences under Sections 304 and 337 IPC. In these circumstances, be mere non-response of 1st respondent the Insurance Company cannot be let off as it failed to prove the other condition in ***Swaran Singh***'s case (2 supra) that the alleged breach committed by the insured was the fundamental cause for the accident. So, the contention of Insurance Company cannot be upheld.

12) Then coming to the quantum of compensation. The Tribunal failed to award any compensation for funeral expenses. Considering it claimants are awarded Rs.**10,000/-** towards funeral expenses.

a) Loss of consortium is concerned, the Tribunal awarded only Rs.9,000/-. It shall be noted that claimant lost her husband in the prime of her youth. Considering the amount granted by the Tribunal as inadequate, the same is enhanced to Rs.**25,000/-.**

c) Sofaras the contention regarding selection of multiplier is concerned, the Tribunal having regard to the age of the deceased as 33 years selected 15.49 as multiplier, whereas the Apex Court in the case of ***Sarla Verma*** (1 supra) provided '16' as multiplier for the persons in the age group of 31 to 35 years. Hence when '16' is applied, compensation for loss of dependency comes to Rs.**3,84,000**/- (Rs. 24,000 x 16).

Thus, the total compensation payable to the claimants under different heads is as below:

Loss of dependency Rs.3,84,000-00

Funeral expenses Rs. 10,000-00

Loss of consortium Rs. 25,000-00

Total Rs.4,19,000-00

Thus, the compensation is enhanced by Rs.**39,000**/- (Rs.4,19,000/- minus Rs.3,80,000/-)

13) In view of the above discussion, the two appeals are disposed of as follows:

i. MACMA No.1670 of 2011 filed by Insurance Company/2nd respondent in the O.P. is dismissed and

ii. MACMA No.1242 of 2009 filed by claimants in the O.P. is partly allowed and the compensation is enhanced by Rs.**39,000**/- with proportionate costs and simple interest at 7.5% p.a from the date of O.P. till the date of realization.

iii. Respondents 1 and 2 in the O.P. are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them

iv. No order as to costs in the appeals.

As a sequel, miscellaneous applications pending, if any, in these appeals shall stand closed.

U. DURGA PRASAD RAO, J

Date: 30.09.2015