IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADES

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M.A.C.M.A. Nos.3757 of 2009 & 723 of 2011

Between:
MACMA No.3757 of 2009

1. Shaik Noorajahan and three others …. Appellants

And

1. S. Ananda Naidu and anotehr …
Respondents

MACMA No.723 of 2011

M/s National Insurance Company Limited …. Appellant

And

1. Shaik Noorjahan and four others … Respondents

DATE OF JUDGMENT PRONOUNCED: **17.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
   may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
   marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
   see the fair copy of the Judgment? Yes /

   No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.Nos.3757 of 2009 and 723 of 2011

Common Judgment:

The claimants and the Insurance Company filed the instant appeals—M.A.C.MA.No3757 of 2009 and M.A.C.M.A.No.723 of 2011 respectively challenging the Award dated 06.08.2009 in M.V.O.P.No.301 of 2006 passed by the MACT-cum-District Judge, Chittor (for short “the Tribunal).

2a) On factual side, on 26.10.2005 while the deceased was proceeding from Piler to Kallur on Tata Sumo bearing No. AP 03 G 7072 and when it reached near ITI on Piler-Chittor road, the driver drove the same in a rash and negligent manner and at high speed and dashed to a road side tamarind tree resulting in his death. It is averred the driver of Tata Sumo was at fault and due to sudden death of the deceased, the claimants became destitutes. On these pleas, the claimants filed MVOP No.301 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “MV Act”) against respondent Nos. 1 and 2, who are the owner and insurer of Crime Vehicle, claiming compensation of Rs.6,00,000/-.

b) R1 remained *ex parte*.

c) The second respondent/Insurance Company filed counter and opposed the claim denying all the material averments and urged to put the claimants in strict proof of the same. It further contended that R.2 issued a Private Car policy i.e., B-Package which will not cover the risk of the passengers if the vehicle is used for hire or reward and as the vehicle in question was used for hire violating the policy conditions, it is not liable to pay any compensation. R2 further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial P.Ws.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of the claimants. RW1 was examined and Ex.B1—copy of policy was marked on behalf of the respondents.

e) The Tribunal considering the oral and documentary evidence awarded compensation of Rs.4,27,500/- under different heads as follows:

Loss of dependency	Rs. 4,18,000-00
Loss of consortium	Rs. 5,000-00
Funeral Expenses	Rs. 2,000-00
Loss of Estate	Rs. 2,500-00
	Rs. 4,27,500-00

Hence the instant appeals.

3) Heard arguments of Sri T.C. Krishnan, learned counsel for appellants/Claimants in M.A.C.M.A.No.3757 of 2009 and Sri Naresh Byrapaneni, learned counsel for appellant/insurance Company in M.A.C.M.A.No.723 of 2011 and Ch. Siva Reddy, learned counsel for respondent/claimants in M.A.C.M.A.No.723 of 2011. Notice sent to R.1/Owner in MACMA No. 3757 of 2009 and R.5 in MACMA No. 723 of 2011 served, but no representation and hence treated as heard.

4) The parties in this appeal are referred as they stood before the Tribunal.

5a) Learned counsel for claimants firstly argued that the Tribunal erred in restricting the liability of insurance company to

Rs.2,00,000/- instead of full extent. He argued that the deceased travelled in the vehicle as a 3rd party and the liability of insurance company towards 3rd parties is unlimited. Hence, the insurance company shall pay the entire compensation awarded by the Tribunal.

b) Secondly, challenging the inadequacy of compensation, he argued that the Tribunal took a low income of the deceased and further it also took a low multiplier. He submitted that the deceased was a vegetable gate contractor and earning Rs.75,000/- per annum through gate collections at the vegetable market and he was doing business in Mango, Tamarind and Ground nut etc., and earning Rs.50,000/- per annum and further, he was owing Ac.2.00 cents of land and getting Rs.30,000/- as income and thus in all he was getting annual income of Rs.1,55,000/-, but the Tribunal took only Rs.60,000/- as his earnings and thereby compensation was decreased. He also submitted that '15' is the correct multiplier for the persons in the age group of the deceased, but the Tribunal erroneously took '10.45' as multiplier. He contended that the Tribunal awarded a low amount of Rs.5000/- towards loss of consortium. But, as per the decisions of the Apex Court in ***Rajesh and others vs. Rajbir Singh and others***[1], the first claimant is entitled to Rs.1,00,000/-. He, thus, prayed to allow the appeal and enhance the compensation and fasten entire liability on the insurance company.

6a) Per contra, severely criticizing the award insofar as fixing the liability to an extent of Rs.2,00,000/- on insurance company, learned counsel for 2nd respondent argued that the Tribunal grossly erred in fixing the liability on the insurance company when the risk of the deceased was under personal accident policy. Learned counsel would argued that when the claim is under personal accident policy, the claimant should approach a Civil Court or a Consumer forum for redressal, but he cannot file a claim under M.V.Act. He, thus, prayed that the insurance company may be totally exempted from the liability.

b) Secondly, he argued that the compensation awarded by the Tribunal itself is a high amount and there is no need to revise the same.

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

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

8) **POINT**: The accident, involvement of Tata Sumo bearing No. No. AP 03 G 7072 and the death of the deceased are not in dispute. The main contentions are (1) The coverage of policy to the deceased and (2) the adequacy of compensation. Ex.B.1-Policy is concerned, it was issued for the period covering from 30.08.2005 to 29.08.2006. The accident was occurred on 26.10.2005 and so the policy was in force by the date of accident. Regarding the coverage of risk of the deceased, the contention of the insurance company before the Tribunal is that the policy is a private car policy i.e., B-Package and it will not cover the risk of the passengers who travelled on hire or reward and as the deceased travelled in the ill-fated vehicle as a hired passenger, his risk will not be covered. This argument cannot be accepted for the reason that in the OP the claimants clearly

pleaded that the deceased was a close friend of the first respondent/owner and on the date of accident, the deceased and his brother S. Khader Mohiddin went to Piler for sale of jaggery of first respondent and while returning to Kallur, they met with the accident. So, it is their claim that the deceased travelled in the vehicle as a gratuitous passenger, but not as hired passenger. In the evidence of PW.1 also, this fact was clearly stated. Though the respondent/insurance company contended that the deceased travelled in the vehicle as a hired passenger, it did not produce any evidence to that effect. Therefore, the deceased shall be treated as a gratuitous passenger only. When Ex.B.1 is perused, the policy was issued treating the vehicle as private car and nature of the policy was B-package. The first respondent paid premium of Rs.500/- under the head " PA to unnamed passengers number 5 and Amount Rs.2,00,000/- per person". Therefore, it is clear that the vehicle was having the personal accident risk up to 5 passengers at Rs.2,00,000/- per passenger. As the deceased travelled as a gratuitous passenger, his risk shall be deemed to be covered under the terms of the policy. It should be noted here that in the appeal, the learned counsel for insurance company took the plea that claim under personal accident risk cannot be made under M.V.Act and the claimants have to seek redressal in a Civil Court or before Consumer forum. I am unable to accept this contention for the reason that here the claim under personal accident risk was not made by the owner of the vehicle but it was made on behalf of one of the passengers. Ex.B.1-Policy shows that premium was paid to give coverage to the personal accident risk of passengers as well as personal accident risk of the owner and driver. Since the claim here is in respect of the passenger, who is not a owner, the claimants need not approach the other fora. Therefore, the insurance company is liable to pay compensation to the claimants.

9) The contention of the claimants is that the deceased was a 3rd party and so the Tribunal ought not to have restricted the liability of insurance company to Rs.2,00,000/-. This argument, it must be said, does not carry conviction. The deceased was one of the passengers in the vehicle and he was not a 3rd party. Therefore, the liability of insurance company is to the extent of Rs.2,00,000/- only as stipulated in Ex.B.1-Policy. This Court in the decision reported in **Oriental Insurance Company Limited and Smt Raj Kumari and others**[2], as held that the liability of insurance company would be limited in terms of the policy and the Tribunal having relied upon the said decision, rightly restricted the liability on insurance company to the extent of Rs.2,00,000/-.

10) Quantum of compensation is concerned, the Tribunal, in my considered view, has rightly taken the annual income of the deceased as Rs.60,000/- having regard to the nature of evidence on record. However, the multiplier being too low, the same is taken as “11”. Then the compensation for loss of dependency comes to Rs.4,40,000/- (Rs.40,000x11= Rs.4,40,000)/-. The compensation for loss of consortium is concerned, the Tribunal awarded Rs.5000/-. It is claimed that the first claimant is entitled to Rs.1,00,000/- towards loss of consortium. It is seen that the deceased died in his middle age but not in the prime of his youth. As such, the compensation can be increased only marginally. Accordingly, the compensation for loss of consortium is enhanced

to Rs.10,000/-. Similarly, funeral expenses also enhanced to Rs.10,000/- considering that what was awarded by the Tribunal was very low. Thus, the total compensation payable to the claimants is as follows:

Loss of dependency	Rs. 4,40,000/-
Loss of consortium	Rs. 10,000/-
Funeral Expenses	Rs. 10,000/-
Loss of estate	Rs. 2,500/-

Total	Rs. 4,62,500/-

Thus, the compensation is enhanced by Rs.35,000/- (Rs.4,62,500/- minus Rs.4,27,500/-).

11) In the result, both the Appeals are disposed of and ordered as follows:

1. MACMA No.723 of 2011 filed by the Insurance Company is dismissed.

2. MACMA No.3757 of 2009 filed by the claimants is partly allowed and compensation is enhanced by Rs.**35,000**/- with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

3. The respondents 1 and 2 in the OP are directed to deposit the compensation to the extent of their liability within two months from the date of this judgment, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 17.08.2015
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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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M.A.C.M.A.No.3757 of 2009
&
M.A.C.M.A.No.723 of 2011

Dt.17.08.2015.

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[1] (2013) 9 SCC 54

[2] AIR 2008 SC 403