

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

**M.A.C.M.A.Nos.3158 of 2008, 3890 of 2008, 3899 of 2008 and
292 of 2012**

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COMMON JUDGMENT:

These four appeals are directed against the common order dated 18.06.2007 passed in O.P.Nos. 740 and 741 of 2004 on the file of the Prl. Motor Accident Claims Tribunal (District Judge), Nellore, hence they are being disposed of by this common judgment.

M.A.C.M.A.No.3158 of 2008 and M.A.C.M.A.No.292 of 2012 are filed by the claimants in O.P.Nos.741 of 2004 and 740 of 2004 respectively seeking enhancement of the compensation while M.A.C.M.A.Nos.3890 and 3899 of 2008 are filed by the insurance company respondent No.2 in the above O.Ps. questioning the very grant of compensation.

Heard the learned counsel for the appellants, the learned counsel for the respondents and perused the material available on record.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

The facts in issue are as under:

O.P.No.740 of 2004 was filed by the injured seeking compensation of Rs.1,50,000/- for the injuries sustained by her in a road accident that took place on 02.09.2004. Similarly O.P.No.741 of 2004 was filed by the legal heirs of the deceased claiming compensation of Rs.3,00,000/- for the death of

Nagarajamma in the said accident. The averments in the claim-petitions would show that on 02.09.2004 the deceased Nagarajamma and her sister Sumalatha (petitioner in O.P.No.740 of 2004) were proceeding on the motor cycle driven by one Kavuri Maruthi Kumar and when they reached the Mosque at Venkateswarapuram near Pennar Bridge, a bus bearing No. AP 26 U 1940 driven by its driver in a rash and negligent manner swerved to its right side and hit the motor cycle. As a result of which, all three of them fell down. One pillion rider (Claimant in O.P.No.740 of 2004) sustained grievous injuries and another pillion rider (deceased in O.P.No.741 of 2004) died on the way to the hospital. Since the accident took place due to the negligence of the driver of the first respondent and as the second respondent is insurer of the said vehicle both of them are jointly and severally made liable to pay the compensation.

The first respondent remained *ex parte*. The second respondent filed counter disputing the rashness and negligence attributed to the driver of the bus. It is stated that the accident happened due to triple riding of the motor cycle, hence the second respondent pleads for dismissal of the claim-petitions. In any event it is stated that the compensation claimed by the claimants is highly excessive and exorbitant.

Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred out of the use of the motor vehicle bearing Registration No. AP 26 U 1940 of respondent No.1?
- 2) Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?

3) To what relief?

Since both the claim-petitions are clubbed together, common evidence was adduced. The claimants examined PWs.1 to 3 and got marked Exs.A1 to A14. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

After considering the oral and documentary evidence available on record, the Tribunal held that the accident took place due to the rash and negligent driving of the driver of the respondent No.1 and both the respondents are jointly and severally liable to pay compensation. Holding so, the Tribunal awarded a sum of Rs.30,000/- in O.P.No.740 of 2004 and Rs.1,50,000/- in O.P.No.741 of 2004 with interest @ 7.5% p.a. from the date of petition till the date of realization.

As stated earlier, out of four appeals, two appeals are at the instance of insurance company questioning the award of compensation and two appeals are filed at the instance of claimants seeking enhancement.

The main ground urged by the learned counsel for the insurance company is that the finding of the Tribunal in holding that the driver of the bus alone is responsible for the accident is perverse and states that the deceased, injured and rider of the motor cycle who were traveling on the motor cycle, which is prohibited under the Act, are alone responsible for the incident.

On the other hand, the learned counsel for the claimants contends that there is no independent evidence adduced by the insurance company to show that the accident occurred on account of the triple riding only. He further submits that the compensation awarded by the Tribunal is on lower side and the same needs to be

enhanced.

The first question that falls for consideration is whether the accident took place due to the rash and negligent driving of the driver of the bus or whether there was any contributory negligence by the rider of the motor cycle.

In order to appreciate the said contention, it would be necessary to refer to the evidence available on record. PW.2, who is the injured-claimant was examined as an eye witness to the accident. According to her on the date of accident i.e. on 02.09.2004, she along with her sister (deceased) were proceeding on motor cycle driven by Kavuri Maruthi Kumar, who is their teacher and when they were proceeding near Pennar Bridge, a bus bearing No. AP 26 U 1940 driven by its driver in a rash and negligent manner turned the vehicle to his right side resulting bus touching the motor cycle in which herself, deceased and another were traveling. Because of the negligent act of the bus driver, all of them fell down and received injuries. Immediately thereafter, PW.2 along with deceased, were shifted to Government Hospital, Nellore and later she took treatment in Bone Setting Hospital, Puttur. PW.2 was cross examined at length by the counsel appearing for the insurance company. It has been elicited in the evidence of PW.2 that while they were proceeding to Kovvur, bus came in the same direction and they were in front of the bus. To a suggestion that the driver of the motor cycle was responsible for the accident was denied by her. It was also suggested to PW.2 that there was no scope for the driver of the bus to go high speed, but the same was denied.

As against the evidence of PW.2, the insurance company got examined RW.1. In his chief examination he stated that on the

date of accident while he was driving a bus which was proceeding from Vedayapalem to Kovvur, at about 9.30 a.m. on penna river bridge, one RTC bus and one tractor dashed against each other, due to that number of vehicles were stopped on both sides of the pennar bridge due to traffic jam. Police came and cleared the traffic and the vehicles were moving slowly. He further deposed that the bus was also moving slowly and many vehicles were proceeding in front of his bus. At that time one person who was riding a motor cycle came from behind, lost control over the vehicle, slipped and fell down. It is his evidence that due to which one girl, who was pillion rider of the motor cycle received injuries while another girl died. It is his evidence that the accident occurred due to rash and negligent driving of the rider of the motor cycle. During cross examination, it has been elicited from Rw.1 that a criminal case against him is pending. However he denied the suggestion that the accident took place due to his fault.

As seen from the above, the claimants got examined PW.2 as an eye witness to the accident, where as the insurance company examined RW.1 who was found to be responsible for the accident. As against the oral evidence of PW.2 and RW.1, the claimants also got marked Ex.A1 First Information Report and Ex.A5-copy of the charge sheet filed against RW.1 to show that the accident occurred due to rash and negligent driving by the driver of the bus. A perusal of the charge sheet which has been filed by the police after due investigation reveal that the accident took place while the motor cycle was in front of the bus and that the driver of the bus was responsible for the accident.

In an identical situation, a learned Single Judge of this Court in ***D.Vasheeda v. V.Babakka***^[1] observed as under:

“PW.2 is one of the injured witness to the accident. He testifies that on the date of the accident, he along with the deceased Dudekula Babu and one Rajagopal was proceeding on a motorcycle and that on reaching Chowdeswari Colony Gram Panchayat, Hindupur, a lorry came from behind and dashed the motorcycle and as a result, he and other two persons sustained injuries. It is also stated by him that the deceased Dudekula Babu was shifted to Hindupur Government Hospital for treatment and while undergoing treatment, Dudekula Babu succumbed to his injuries. Though a suggestion was put to him that the accident occurred due to triple riding on the motorcycle, the same has been denied by him. Except putting a suggestion to PW.2, no evidence has been adduced by the insurer to contradict the version of the incident spoken by PW.2. The learned Tribunal attributed negligence to the rider of the motorcycle, on the sole ground of triple riding on the motorcycle. There is no evidence adduced by the insurer that the accident occurred because of the triple riding of the motorcycle. In the absence of any evidence, it cannot be assumed or presumed that the accident resulted because of the triple riding of the motorcycle. The evidence of PW.2 is crystal clear that the lorry came in high speed and dashed the motorcycle and as a result, he and other two persons travelling on the motorcycle fell on road and sustained injuries. The finding recorded by the learned Tribunal that there was contributory negligence on the part of the rider of the motorcycle is not based on any evidence. Hence, I find that the accident occurred due to negligent driving of the driver of the lorry bearing No.APA 5805.”

Similarly, another learned Single Judge of this Court in ***Kumari K.Pushpa Latha v. E.Murali Manohar Rao and another***^[2] held as under:

“ In this case, except there being evidence of triple

riding of motor cycle bearing No.AP 11B 5316, there is no further evidence to show that motor cycle rider was riding the motor cycle in a hap-hazard manner or in a zigzag fashion in order to contribute negligence for this accident. The fact that Maruti Car came from behind the motor cycle and dashed the motor cycle discloses that Maruti Car was being driven at higher speed than the motor cycle and dashed the motor cycle from back side when the motor cycle was going in front of the car was visible to the car driver. When the motor cycle was going in front of the car and there was no clearance of the road for the car to pass through the road overtaking the motor cycle, driver of the car should have slowed down the car and as and when there was clearance, he should have overtaken the motor cycle. Instead, the car driver has preferred to hit the motor cycle going in front of it. This undoubtedly shows that the car driver was at fault and the accident is the result of rash and negligent driving of the car driver solely and the motor cycle rider did not contribute any negligence for this accident. Therefore, in my opinion, the lower Tribunal came to an erroneous conclusion that the motor cycle also contributed negligence for this accident on the mere fact that there was triple riding on the motor cycle. The lower Tribunal erred in disallowing 50% of the compensation payable to both the appellants.”

From the two judgments referred to above, it is clear that merely because three persons were traveling on the motor cycle, the same does not by itself disentitle them to claim compensation. There has to be independent evidence on record to show that the driver of the motor cycle was negligent while driving the motor cycle and that the accident took place due to his rashness and negligence. There being no evidence on record with regard to the negligence or rashness on the part of the rider of the motor cycle, the finding of the tribunal in holding the driver of the bus guilty warrants no interference. Therefore, the insurance company

cannot escape themselves from the liability to pay the compensation.

Coming to the quantum of compensation to be awarded in M.A.C.M.A.No.291 of 2012 (O.P.No.740 of 2004). The claimant sought for a sum of RS.1,50,000/- for the injuries sustained by her in the accident. She got examined the doctor, who treated her, as PW.3 to show the nature of injuries sustained by her. The Tribunal awarded Rs.30,000/- by rejecting the evidence of PW.3, who is said to have treated the claimant at Puttur.

In order to award compensation in case of personal injuries, the Apex Court in ***Raj Kumar Vs. Ajay Kumar and another***^[3] held as under:

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that

compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) – involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii) (b).

In the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment but also for the loss of earning, inability to lead a normal life and enjoy amenities, which would have been enjoyed but for disability caused due to the accident.

The claimant in her evidence stated that immediately after the accident she was taken to Government Hospital, Nellore and later she took treatment in Bone setting Hospital, Puttur and also with a private doctor. In her evidence she stated that she spent a

sum of Rs.25,000/- towards medical expenses, transportation and attendant charges. The age of the claimant as per the evidence available on record was 18 years on the date of the accident. Immediately after the accident she was admitted in Government Hospital, Nellore, wherein she was advised to undergo surgery to left femur. PW.3 examined her on 18.10.2006 wherein he opined the need of surgery and also assessed the disability at 35%. The Tribunal rightly rejected the evidence of PW.3 since no documentary evidence is produced to show that the injured was treated as an out-patient with PW.3. Even in his evidence, PW.3 did not say as to when he treated the claimant in O.P.No.740 of 2004. In view of the above, the Tribunal held that PW.3 is not competent to assess the disability. Infact, when PW.2 was examined on 28.11.2006 she did not even speak about the follow up treatment with PW.3 on subsequent dates. The fact remains is that PW.2 sustained injuries. Her evidence could not be impeached in cross examined. The evidence of RW.1 who is examined on behalf of the insurance company deposed about the injuries sustained by one pillion rider and also the death of another pillion rider. That being the position, the question is whether the amount of Rs.15,000/- towards grievous injuries and Rs.15,000/- towards medical expenses and attendance awarded by the Tribunal is just and reasonable.

As stated earlier PW.2 is aged about 18 years and a college going girl. Definitely the said accident must have hampered her studies putting her to lot of mental torture apart from the physical pain. Though there is no evidence with regard to the period for which the claimant took treatment in the hospital, but having regard to the finding of the Tribunal in awarding attendant charges it can be said that she must have been hospitalized for some

time. Exs.A11 to A14 which are X-rays and case sheet established the nature of injuries sustained by her. Exs.A9 and A10 bunch of medical prescriptions and medical bills produced by the claimant show the nature of treatment taken by her.

Considering the nature of injuries, the Tribunal awarded a sum of Rs.15,000/- for one grievous injuries, which in my view appears to be reasonable. Coming to the compensation under non-pecuniary damages, no amount was awarded by the tribunal towards pain and suffering. The evidence on record as indicated above clearly established the pain and trauma which the petitioner would have undergone during the period of her treatment. Definitely no amount of money can compensate the pain and trauma undergone by the petitioner. The unimpeached evidence of PW.2 goes to show that due to injuries she was bed ridden and could not continue her studies. She must have been put to great inconvenience and hardship in her day today activities. In view of the above circumstances, I deem it appropriate to award a sum of Rs.25,000/- towards pain and suffering and Rs.20,000/- towards loss of concentration on studies, extra nourishment and transportation charges. Thus in all the petitioner is entitled to a sum of Rs.75,000/- as compensation.

Coming to the quantum of compensation to be awarded in M.A.C.M.A.No.3158 of 2008 (O.P.No.741 of 2004), the Tribunal awarded Rs.1,50,000/-. It is to be noted that the deceased was aged about 20 years and studying degree first year. It is the evidence of PW.1 that the deceased was earning Rs.1,000/- per month by making tuitions. However, the said fact was not accepted by the Tribunal as she was only a student studying first year degree. It is evident from the record that the deceased was studying B.Sc. first year at the time of accident. Even assuming

for the sake of argument that she would be earned Rs.3,000/- per month which a labourer would earn in a district head quarters, the finding of the Tribunal in awarding lumpsum amount is incorrect.

In ***Kishan Gopal and another V. Lala and others***^[4] the Apex Court held as under:

“We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of *Sarla Verma v. Delhi Transport Corporation*^[5] the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites.”

In view of the judgment referred to above the annual income of the deceased can be fixed at Rs.30,000/- per annum. It is also well established principles of law that in case of death of bachelor the ages of the parents and preferably the age of the mother is to be taken into consideration for applying the multiplier and also calculating the loss of dependency. As per the cause title the age of the mother of the deceased was shown as 37 years and the same is not in dispute. When the age of the mother of the deceased is taken as 37 years, the suitable multiplier to be adopted would be 15. Taking the income as Rs.30,000/- per annum, deducting ½ towards her personal and living expenses and by applying multiplier 15 the loss of dependency would be

Rs.15,000/- x 15 = Rs.2,25,000/-. No amount was awarded by the Tribunal under conventional heads. Apart from that the claimants are also entitled to Rs.50,000/- towards conventional heads i.e. loss of love and affection and funeral expenses. Thus, in all the claimants are entitled to Rs.2,75,000/-.

Accordingly, M.A.C.M.A.No.3158 of 2008 and M.A.C.M.A.No.292 of 2012 are allowed in part by enhancing the compensation from Rs.1,50,000/- to Rs.2,75,000/- (M.A.C.M.A. No.3158 of 2008) and from Rs.30,000/- to Rs.75,000/- (M.A.C.M.A. No.292 of 2012) while dismissing the M.A.C.M.A.Nos. 3890 and 3899 of 2008 filed by the insurance company/respondent No.2. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The enhanced amount in M.A.C.M.A.No.3158 of 2008 shall be apportioned in the manner directed by the Tribunal.

There shall be no order as to costs. The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

01.09.2015

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[\[1\]](#) 2012 (6) ALD 688

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[\[3\]](#) MACD 2011 (SC) 33

[\[4\]](#) 2014 (1) An.W.R. 58 (SC)

[\[5\]](#) 2009 ACJ 1298 (SC)