

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
M.A.C.M.A.No.895 of 2012

JUDGMENT:

The instant appeal is preferred by respondent Nos.1 and 2 in M.V.O.P.No.982 of 2006 challenging the order dated 31.07.2010, on the file of the Chairman, Motor Accidents Claims Tribunal – cum- Principal District Judge, Warangal, whereby and whereunder determined the compensation of Rs.8,15,960/-, and directed the appellants herein to deposit the entire compensation amount with interest while exonerating the third respondent – Bajaj Allianz General Insurance Company Limited on the ground that a fake driving licence was pressed into service basing on the evidence of RWs.1 and 2, who are the officials of Insurance Company and Regional Transport authority respectively.

For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in O.P.

Coming to the facts, on 17.04.2006 at about 4.15 p.m, while one A.Suryanarayana, whose heirs are the petitioners in O.P., along with his colleague, Sri V.Srinivas, was proceeding on LML Vespa No.AP 36-4376 from the main gate of MGM Hospital, Warangal, at which time, Hero Honda Splendor Plus motorcycle bearing No.AP 36 M 9362 driven in rash and negligent manner at high speed hit the LML Vespa; and the said A.Suryanarayana (hereinafter referred to as 'the deceased') sustained head injury and succumbed to injuries on 11.05.2006, while undergoing treatment. The petitioners averred that as the deceased was a government employee drawing a salary of Rs.10,205/-, and due to retire on 30.06.2008, sought for a

compensation of Rs.8,4,585/- from respondent Nos. 1 to 3.

Respondent Nos.1 and 2, though, appeared by engaging an advocate, still did not choose to file counter.

The third respondent – Insurance Company filed a counter opposing the claim and disputing the material allegations mentioned in the petition. The third respondent, however, obtained permission of the Tribunal to take the defence available to the insured – first respondent under Section 170 of the Motor Vehicles Act in I.A.No.1760 of 2008 dated 11.09.2008.

The Tribunal framed the following issue for determination:

“Whether P1- widow and P2-son of the deceased – Suryanarayana are entitled to a compensation of Rs.8,41,585/- from R1 to R3 for causing his death on 11.05.2006 at about 12.00 hours in a motor vehicular accident that occurred on 17.04.2006 at about 11.00 a.m. opposite MGM Hospital main gate, Warangal, due to rash, negligent and high speed riding of Hero Honda Splendor Plus motorcycle, AP 36 M-9362, by its rider?”

During enquiry, the second petitioner examined himself as PW.1 besides examining one Sri V.Srinivas, who was other injured and eye witness, as PW.2 and the Superintendent, Government Polytechnic, Warangal as PW.3, and marked Exs.A.1 to A.7 to substantiate their claim. On behalf of the respondents, one Sri T.Somaraju, an employee of the third respondent – Insurance Company, was examined as RW.1 and Sri R.Satish, working in Regional Transport Authority, was summoned by the third respondent and examined as RW.2 and marked Exs.B.1 to B.5. The Tribunal, on appraisal of evidence let in by both sides, both, oral and documentary, in an attempt to substantiate their stands, recorded a finding that the evidence of RWs.1 and 2 would show that the driver of the offending vehicle was not holding a valid driving licence and it was a fake driving licence; and, while determining the compensation,

basing on Ex.A.6, though, mentioned as unmarked salary certificate dated 19.06.2006, in regard to which PW.1 has spoken to stating that the net salary was Rs.9,045/-, deducted 1/3rd therefrom towards personal expenses of the deceased, and placing reliance on **Sarla Verma v. Delhi Transport Corporation**^[1], applied the multiplier '11' to the multiplicand and arrived at Rs.7,95,960/- towards loss of dependency. The Tribunal has also granted Rs.10,000/- towards loss of consortium to the first petitioner; Rs.5,000/- towards loss of love, affection, care, guidance, estate; and Rs.5,000/- towards funeral expenses. Thus, the Tribunal arrived at a total compensation of Rs.8,15,960/-, and ordered respondent Nos.1 and 2 to pay compensation while exonerating the third respondent of its liability as against the claim of Rs.8,41,585/-.

It is the aforementioned order and decree which are challenged in the instant appeal by respondent Nos.1 and 2 contending in grounds of appeal, among other grounds, that both the owner and the Insurance Company is liable to pay compensation.

Though, the appeal relates to the year 2012, still, it is taken up for disposal for the reason that the appellants have come up with MA.CMA.MP.No. 448 of 2015 filed on 18.02.2015 requesting this Court to extend time by four weeks for depositing 50% amount, as ordered in MA.CMA.MP.No.2153 of 2012 in MA.CMA.No.895 of 2012 dated 07.08.2013, by suspending the orders in E.P.No.71 of 2012 in M.V.O.P.No.982 of 2006 on the file of Principal Motor Accident Claims Tribunal, Warangal dated 28.10.2014. When the said petition was taken up for hearing, during the course of arguments, it was pointed

out that the driving licence held by the driver of the offending vehicle was genuine, and not a fake one; and, to that effect, an application in MA.CMA.MP.No.1115 of 2014 was filed by the appellants requesting this Court to receive a copy of the driving licence issued by the licencing authority, Warangal, dated 01.08.2011, indicating that the licence issued was genuine and not a fake one. Both sides, however, request that, instead of disposing of MA.CMA.MP.No. 448 of 2015, they would argue the appeal itself and, therefore, the instant appeal has been taken up for hearing.

MA.CMA.MP.No. 1115 of 2014, filed under Order 41 Rule 27 read with 151 CPC, to receive the driving licence was allowed, and the said document was marked as Ex.B.6 as it was filed by respondent Nos.1 and 2 in the O.P.

Now there is nothing to decide in the instant appeal since the controversy which was originally existing when the appeal was preferred ceases in view of the fact that Ex.B.6 was a genuine driving licence, and not a fake one and, therefore, the finding recorded by the Tribunal thereon requires to be overturned and is, accordingly, set aside. The consequence being that the liability has to be cast on the third respondent and as nothing else is required to be probed into since the Tribunal did not go wrong in determining compensation by taking into consideration the net salary, deducted 1/3rd therefrom, applied the multiplier as per Sarla Verma's case (1 supra) and, even, in regard to the conventional sum, awarded a sum of Rs.20,000/-.

Therefore, the appeal is allowed observing that the compensation amount awarded by the Tribunal is confirmed extending the liability to the third respondent. Respondent Nos.

1 to 3 are jointly and severally liable to pay compensation to the petitioners. The interest granted by the Tribunal is maintained.

Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

A.SHANKAR NARAYANA,J

Date: 26.02.2015

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[\[1\]](#) 2009 ACJ 1298