

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA Nos.2716 and 2746 of 2006, 256 and 401 of 2007

COMMON JUDGMENT

These four appeals two by Insurer and the other two by respective claimants preferred against two claims which are outcome of the same accident, arisen for common hearing and disposal herein.

1-i(a) In MACMA No.256 OF 2007 the appellants are the three claimants no other than wife, major son and mother of the deceased scooterist-G.Lakshmi Kantha Rao, aged about 43 years as per Ex.A.2 Post mortem report, claimed as driver that was working in M/s Industrial Needs, Panigunj, Secunderabad and was drawing salary of Rs.3,500/- p.m. as per Ex.A.5 salary certificate, in O.P.No.1761 of 2002 maintained under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*) on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-XXII Addl.Chief Judge, Hyderabad, (*for short, 'the Tribunal'*), for claim of Rs.6,60,000/- against the owner and insurer of the Crime vehicle Toyota Qualis bearing No.AP 22 E 2708 which allegedly driven in a rash and negligent manner by its driver and dashed the scooter bearing No.AP-10-A-1739 of deceased Lakshmi Kantha Rao, while he was proceeding on Uppal-Tarnaka road. The tribunal from the contest by the owner and Insurer by its award dated 07.08.2006 granted Rs.3,87,000/- with interest at 7.5% p.a. by fixing liability holding that the accident took place due to rash and negligent driving of Qualis belongs to the 1st respondent insured with the 2nd respondent. The tribunal taken by taking Rs.3,000/- p.m. as monthly income of the deceased even salary certificate Ex.A.5 shows Rs.3,500/- p.m. and after deducting 1/3rd towards personal expenses of the deceased and taking the multiplier 15

from age of the deceased 43 years, and by awarding other conventional amounts.

1-i(b) The claimants preferred the present appeal are contending that the compensation awarded is utterly low, that the tribunal failed to take Rs.3,500/- p.m. as monthly earnings of the deceased working as driver from his salary certificate Ex.A.5 and evidence of P.W.2 for assessing compensation with future prospects, that the tribunal erred in awarding meager amounts under other conventional heads, loss of consortium, loss of estate and funeral expenses and hence to set aside the award and grant compensation as prayed for.

1-ii(a) In MACMA No.401 OF 2007 the appellants herein are the three claimants no other than the wife, and two minor daughters of the deceased S.S Subba Rao aged about 43 years as per Ex.A.2 Postmortem report, claimed as Analytical Chemist by profession, in M/s Espi Industries and Chemicals Limited, Uppal, Hyderabad, with salary of Rs.6,500/- p.m. as per Ex.A.5, for his death in the motor accident supra while he was proceeding on his motor cycle bearing No. AP9H-8081, due to alleged rash and negligent driving of the driver of the crime vehicle in O.P.No.1755 of 2002 maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-XXII Addl.Chief Judge, Hyderabad, (*for short, 'the Tribunal'*), for claim of Rs.10,60,000/- against the self-same respondents as in MACMA No.256 of 2007, and from the contest by the respondents the tribunal by its award dated 07.08.2006 granted Rs.4,77,000/- with interest at 7.5%p.a. holding that the accident took place due to rash and negligent driving of driver of the Qualis belongs to the 1st respondent with joint liability by taken at Rs.3,500/- p.m. as his earnings and after deducting 1/3rd towards personal expenses of the

deceased and by taking multiplier 15 and awarding other conventional amounts in reached the compensation supra;

1-ii(b) The claimants preferred this appeal are contending that the compensation is utterly low, that the tribunal ought to have seen that the deceased was an employee working as Analytical Chemist drawing salary of Rs.6,500/- p.m. and taken the same for assessing compensation with future prospects, that the tribunal erred in awarding meager amounts under other conventional heads like loss of consortium, loss of estate and funeral expenses and hence to set aside the award and grant compensation as prayed for.

1-iii) In MACMA No.2746 and 2716 of 2006, the 2nd respondent-self-same Insurer (owner of the crime vehicle of the 1st respondent) in the above two O.P.Nos.1755 and 1761 of 2002 preferred the two appeals impugning the compensation awarded in the respective petitions as excessive and exorbitant, besides saying the tribunal failed to see that the respective claimants failed to establish rash and negligence on the part of the driver of the Qualis as there was no eye witness to the accident, that the tribunal also failed to see the driver of Qualis was not holding any valid driving license to drive the vehicle and he was also prosecuted for the offences under Sections 3 and 177 of the M.V.Act, and in such circumstances, the Insurer is not liable for compensation and the tribunal at least should have given pay and recover directions and hence to exonerate the Insurer from liability by setting aside the award.

2. Heard both sides commonly in all the four appeals for common disposal and perused the material on record. For sake of convenience, the appellants in MACMA Nos.2716 and 2746 of 2006 are hereinafter referred to as Insurer and in MACMA Nos.256 and 401 of 2007.

4. The common points involved in four appeals mainly are:

- 1) Whether there is no rash and negligent driving of the driver of the Qualis claim petition's 1st respondent insured with the 2nd respondent and whether there is any contribution by the deceased persons otherwise to the accident in question and whether the driver of the Qualis has no valid driving license and if so the fixing of joint liability on the insurer along with the owner is unsustainable and if so what extent and with what observations as per the respective contentions of the Insurer in their appeals?
- 2) Whether the quantum of compensation is utterly low to enhance in both the claims which is the subject matter of the appeals?
- 3) To what relief?

Points 1 and 2:

5. From the evidence on record in O.P.No.1755 of 2002 of P.Ws.1 and 2 examined and Exs.A.1 to A.7 marked and on behalf of the Insurer, he was examined as R.W.1 and Exs.B.1 to B.3 marked. Likewise in O.P.No.1761 of 2002 P.Ws. 1 and 2 are examined and Exs.A.1 to A.9 marked and R.W.1-employee of the Insurer was examined and Exs.B.1 to B.3 marked. The first claimants P.W.1 in both the claim petitions were not the eye witnesses. In O.P.No.1755 of 2002, what the P.W.2 deposed is not even an eye witness but for if any regarding earnings of the deceased so also P.W.2 in O.P.No.1761 of 2002. Among the documents relied by the petitioners supra, Ex.A.1 in both the claims is FIR against the driver of the Qualis vehicle of 1st respondent insured with the 2nd respondent under Ex.B.1 supra. The employee of the Insurer-R.W.1 exhibited the police final report Ex.B.3 in O.P.No.1761 of 2002 to show the driver of the Qualis has no valid driving license and he was charged for not having valid license under M.V.Act, offences from the police final report and also exhibited Ex.B.2 M.V.I report in substantiating the same. Even from Ex.B.1 marked in both the cases the Qualis is covered by valid insurance otherwise but for on liability therefrom.

6. The final report Ex.B.3 in both the cases, no doubt, against the driver of the Qualis, the tribunal observed the driver of the Qualis not examined by anybody even a best witness. In fact, it is the case of the claimants that the Qualis driver responsible for accident. There is no eye witness examined for placed reliance on F.I.R. and chargesheet on record by either side. When such is the case, it is only the evidence on record to appreciate. The two scooterists respective deceased one of them is scooter and the other is motor cycle which met with accidental death itself shows the Qualis driver is negligent. In the absence of showing any material about the negligence of the Qualis driver and there is no even scene observation report filed and the scooters were not subjected to inspection by the Motor Vehicle Inspector to know the nature of damage to it and to know from scene observation shown exactly the accident occurred and its manner and even to go into further as to there is any little contribution by respective deceased to attribute any composite negligence on the scooterist. The tribunal thereby is right in that regard of accident was outcome of rash and negligent driving of the Qualis driver of 1st respondent and for no fault of the two scooterist deceased persons.

7. Now coming to the joint liability of the Insurer if any, the evidence on record of R.W.1 coupled with Exs.B.2 and 3 M.V.I.report and chargesheet from column No.17 of M.V.I. Report from the contents of charge sheet from the driver by name Mohd. Altaf Hussain not having a valid driving license, for offence under the M.V.Act also chargesheet in the police final report and the M.V.I. report speaks of no driving license suffice to say driver has no valid driving license, however, it is not a case of exoneration but for at best pay and recovery with necessary guidelines from the settled expression of the Apex Court in *National*

*Insurance Company Limited Vs. Swaran Singh*¹, Kusumlatha V. Satbir² and S. Iyyappan Vs. United India Insurance Company³. The tribunal in fact, not properly appreciated the expression of Swaran Singh supra in fixing joint liability.

8-a) Now from the above, coming to the quantum of compensation in O.P.No.1755 of 2002, the deceased was claiming as Analytical Chemist. There are no qualifications of the deceased produced in support of Ex.A.5 salary certificate but for oral evidence of P.W.2 J.Narasimha Shastry claiming as Director of M/s Epsi Industries and Chemicals Private Limited who deposed as the deceased was Analytical Chemist. The finding of the tribunal in the absence of showing from any other worth evidence, it is difficult to take said salary at Rs.6,500/- as basis and took the basic pay of Rs.3,750/- of the deceased as his earnings since no deductions, has no basis. When such is the case for no other basis to believe the salary, the tribunal has to assess the earnings as on the date of accident 28.09.2001, no doubt with prospective earnings being an employee therefrom. Even taken from the expression of the Apex Court in Latha Wadhwa vs. State of Bihar⁴ in the absence of proof of earnings, a minimum to be taken is Rs.3,000/- p.m. Once he is an Analytical Chemist, it can be taken, as the accident was one year after the expression, at least Rs.4,000/- p.m. and the prospective earnings to be taken as per Sarla Varma v. Delhi Transport Corporation⁵ from the age at about 43 years as per postmortem report supra with 30% increase, then it comes to Rs.5,200/- if 1/3rd deducted for the personal expenses, Rs.3467/- and from the age about 43 years as per Sarla Verma supra, the multiplier that is applicable is 14, then it

¹ (2004) 3 SCC 297=2004-ACJ-1

² AIR 2011 SC 1234 = 2011 (2) SCJ 639

³ (2013) 7 SCC 62

⁴ (2001) 8 SCC 197=AIR 2001 (SC) 3218

⁵ 2009 ACJ 1298

comes to Rs.3467/- x12x14= Rs.5,82,456/- + even a minimum of Rs.50,000/- towards consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.40,000/- towards care and guidance of two minor daughters below age of 10 years, in all it comes to Rs.6,97,456/- rounded to Rs.6,98,000/-. Thus it requires the compensation granted by the tribunal of Rs.4,77,000/- is enhanced to Rs.6,98,000/- confirming the rate of interest at 7.5%p.a. however subject to pay and recovery.

8-b) Now coming to quantum of compensation in O.P.No.1761 of 2002, the tribunal having evidence that the deceased was a driver from the Ex.A.9 driving licence for not believing the evidence of P.W.2 of the deceased was working as driver for salary of Rs.3,500/- taken, only Rs.3,000/- p.m. even therefrom, once it is established as a driver, the prospective earnings also to be taken into consideration and as the accident is about one year after the expression of Latha Wadhwa supra even taken the earnings of the deceased as driver at Rs.3,200/- p.m. with 30%prospective increase from the age of the deceased 43years as per postmortem report out of Rs.4160/- if 1/3rd is deducted towards personal expenses, it comes to Rs.2773/- x 12x 14= Rs.4,65,900/- +Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, in all it comes to Rs.5,50,900/- rounded to Rs.5,51,000/- to enhance from Rs.3,87,000/- subject to pay and recovery directions.

9. In the result, all the 4 appeals are allowed in part as follows:-

a) In O.P.No.1755 of 2002 (CMA No.401 of 2007) the compensation awarded by the tribunal of Rs.4,77,000/- is enhanced to Rs.6,98,000/- confirming the rate of interest at 7.5%p.a.

b) In O.P.No.1761 of 2002(CMA No.256 of 2007) the compensation awarded by the tribunal of Rs.3,87,000/- is enhanced to Rs.5,51,000/- confirming the rate of interest at 7.5%p.a.

c) However, the joint liability fixed by the tribunal on the Insurer/ appellant in both the claim petitions O.Ps.1755 and 1761 of 2002 (in MACMA 2716 and 2746 of 2006) is modified to pay and recovery. The insurer is directed to pay first to the respective claimants and then to recover from the first respondent-owner of the crime vehicle. The respondents (Insurer and owner of crime vehicle) shall deposit said amount within one month from today, failing which the respective claimants can execute and recover. It is made clear that the insurer is entitled while depositing the amount payable. If not deposited or paid any amount so far, to deposit and to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimants, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good.

d) There is no order as to costs.

e) Miscellaneous petitions, if any pending in these appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.09.2016
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