

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2041 OF 2009 AND 160 OF 2010

AND

MACMAMP No.5305 OF 2007 in MACMA No.2041 OF 2009

COMMON JUDGMENT:

M.A.C.M.A. No.2041 (former appeal) is preferred by respondent No.2 - M/s. New India Insurance Company Limited in M.V.O.P. No.1166 of 2004, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Warangal, aggrieved over the order and decree, dated 23-02-2007, passed by the Tribunal in the aforesaid MVOP, whereby and where-under, a sum of Rs.3,88,000/- was granted as compensation with interest at 7.5% per annum as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the wife and minor son of deceased - Gadapati Ramulu.

M.A.C.M.A. No.160 of 2010 (latter appeal) is preferred by the very same Insurer aggrieved over the order and decree, dated 10-03-2003, passed in O.P. No.602 of 2000, by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Ranga Reddy District at L.B. Nagar., whereby and where-under, a sum of Rs.2,24,000/- was granted as compensation with interest at 9% per annum thereon, as against the claim of Rs.3,00,000/- laid by the very same petitioners in MVOP No.1166 of 2004 along with parents of the deceased.

2. Heard the learned standing counsel appearing for the appellant - M/s. New India Assurance Company Limited in both the appeals. In the former appeal, there is no representation for respondent No.1. Respondent No.2, since minor was being represented by respondent No.1, his mother, and respondent No.3, owner of lorry bearing registration No.AP 36T 5229, despite receipt of notice, did not turn up to enter appearance. In the latter appeal, though, respondent Nos.1, 4 and 5 were sent with notices, they were returned; the same would make no difference in view of the typical nature of claims made by the petitioners repetitively.

3. As could be gathered from record and as canvassed by the learned standing counsel, in these two appeals, one Gadapati Ramulu died in a road accident that occurred on 07-02-2000, while he was driving a scooter bearing registration No.ATX 3337 at about 9.30 p.m., near Uppal Filling Station, a lorry bearing registration No.AP 36T 5229 driven by its driver in a rash and negligent manner at high speed came and hit him, resulting in his instant death who was then aged 35 years, getting Rs.3,000/- per month as a watchman according to the petitioners in O.P. No.1166 of 2000.

4. Claiming compensation, originally, his wife, minor son, parents of the deceased - G. Ramulu, filed a claim petition registered as O.P. No.602 of 2000, on the file of Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Ranga Reddy

District at L.B. Nagar, seeking a compensation of Rs.3,00,000/-. The said O.P. was filed on 14-02-2000. After full-fledged trial, the Tribunal awarded a compensation of Rs.2,24,000/- with interest at 9% per annum thereon, by the order and decree, dated 10-03-2003. This was the first claim petition laid.

5. Subsequently, wife and minor son of the deceased - G. Ramulu, filed another claim petition registered as M.V.O.P. No.1166 of 2004, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Warangal, seeking a compensation of Rs.4,00,000/-. The claim petition was presented on 17-11-2004, which, thus, clearly indicates that more than one and a half years after disposal of the claim petition filed by them along with parents of the deceased, O.P. No.1166 of 2004 was filed, suppressing the fact of obtaining the order and decree earlier. Somehow, the Tribunal at Warangal awarded a sum of Rs.3,88,000/-, perhaps, on account of lapse on the part of the staff of the concerned Court looking after the branch of Motor Accident Claims, and partly on the part of even the Insurance Company's standing counsel and respondent No.2's local branch officials.

6. The present two appeals, thus, arise out of the orders and decrees passed in the said two original petitions. The former appeal relates to the compensation awarded in O.P. No.1166 of 2004, whereas, the latter appeal arises from the award in O.P. No.602 of

2000. Even after obtaining the aforesaid two decrees, the minor son showing the father of the deceased as his natural guardian, and the parents of the deceased resorted to filing yet another claim petition in O.P. No.1264 of 2005, on the file of the Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge, Warangal. That was the third claim made by them for one and the same cause.

7. The learned standing counsel for the appellant - Insurance Company has presented a copy of the award passed in O.P. No.1264 of 2005 for perusal. The said O.P. was dismissed on 01-06-2007 when it was brought to the notice of the Tribunal that the petitioners' claim for compensation laid in O.P. No.602 of 2000 was already granted by passing an award for Rs.2,24,000/- on 10-03-2003. A perusal of the order in O.P. No.1264 of 2005 would show that, in fact, PW.1, the father of the deceased, was examined and Exs.A-1 to A-4 were marked on behalf of the petitioners, and on behalf of respondent No.2, RW.1 was examined and Exs.B-1 to B-5 were marked, in which, copy of decree and copy of memo in O.P. No.602 of 2000 were marked as Exs.B-3 and B-4 including deposition of the wife of the deceased as Ex.B-1 and yet another deposition of one B. Somla as Ex.B-2.

8. It is really, strange and un-understandable as to how, they being the legal representatives of the deceased - G. Ramulu, were making three claim petitions to enrich themselves.

9. Yet another astonishing circumstance is, that despite the fact that O.P. No.1166 of 2004 was still pending when the O.P. No.1264 of 2005 was filed, but, in fact, even O.P. No.1264 of 2005 was prosecuted by examining the witnesses as aforesaid, the Insurance Company - respondent No.2 though, marked the depositions and award passed in O.P. No.602 of 2000, strangely, did not evince due diligence when O.P. No.1166 of 2004 was taken up for trial and the trial was concluded. Since O.P. No.602 of 2000 was already disposed of, what was done in O.P. No.1264 of 2005 by the Insurance Company, the same would have done in O.P. No.1166 of 2004 for the reasons best known to it.

10. Complaining the way in which the petitioners did succeed in the aforesaid two claim petitions, the present appeals are preferred by the Insurer.

11. The learned standing counsel would submit during the course of arguments that since claim petition in O.P. No.602 of 2000 filed in the first instance was even disposed of on 10-03-2003 filed by all the four dependants, who were wife, minor son, father and mother of the deceased; subsequent claim petition in O.P. No.1166 of 2004 was not maintainable. It is, therefore, his submission that the award and decree passed in O.P. No.1166 of 2004, which is under challenge in MACMA No.2041 of 2009, is liable to be set aside. There is every reason to accede to the said submission and there cannot be any

hesitation and, therefore, MACMA No.2041 of 2009, is allowed, setting aside the order and decree, dated 23-02-2007, passed by the District Judge, Warangal in M.V.O.P. No.1166 of 2004.

12. Turning to latter appeal (MACMA No.160 of 2010), since MACMA No.2041 of 2009 is dismissed now, and the claim in O.P. No.1264 of 2005 was already dismissed by the Tribunal at Warangal, as aforesaid, the compensation of Rs.2,24,000 awarded in O.P. No.602 of 2000, by the order and decree, dated 10-03-2000 has to sustain and has to be maintained. In which case, the appeal filed by the Insurance Company in MACMA No.160 of 2010 will fail. But, however, to the extent of rate of interest awarded by the Tribunal at 9% per annum, the same requires reduction in view of the law declared by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹. Therefore, to the extent of rate of interest at 9% awarded by the Tribunal is reduced to 7.5% per annum on the compensation of Rs.2,24,000/- awarded by the Tribunal in O.P. No.602 of 2000.

13. Now, a question may arise that any action should be proposed against the culprits, who are responsible for playing such unethical acts which amount to 'fraud' on the Courts or the Tribunals, as the case may be, in which direction, an application in M.A.C.M.A.M.P. No.5305 of 2007 is filed in M.A.C.M.A. No.2041

¹. 2013 ACJ 1403

of 2009, requesting to initiate appropriate criminal proceedings including contempt proceedings under the Contempt of Courts Act, 1971 against respondents - petitioners by concerned police are sought. In case the appellant - M/s. New India Assurance Company Limited opts to go for initiating criminal proceedings it is open to it to resort to the proceedings by approaching the appropriate Authority or Forum. Accordingly, MACMAMP is also disposed of.

14. In the result, the former appeal (MACMA No.2041 of 2009) is allowed setting aside the order and decree, dated 23-02-2007, passed by the Tribunal in M.V.O.P. No.1166 of 2004 in its entirety, and the latter appeal (MACMA No.160 of 2010) is allowed in part to the extent of reducing the rate of interest to 7.5% per annum from 9% per annum granted by the Tribunal on Rs.2,24,000/- granted in O.P. No.602 of 2000 by the order and decree, dated 10-03-2003. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

September 22, 2016.

Mgr