THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2545 of 2015

JUDGMENT:

This appeal is filed against the order dated 08-07-2015 passed in OP No.819 of 2009 by the Metropolitan Sessions Judge (FAC) I Addl. Metropolitan Sessions Judge-cum-XV Addl. Chief Judge, Hyderabad-cum-Motor Accidents Claims Tribunal. The appellant-M/s.Bajaj Allianz General Insurance Company Limited is 2nd respondent in OP No.819 of 2009 filed by the claimants-respondents 1 to 5 herein.

2. Counsel for the appellant and counsel for the claimants-respondents 1 to 5 advanced their arguments in the appeal and wanted the appeal to be disposed of finally.

3. Facts briefly stated are:- One G. Murali, (since deceased) on the fateful day, was going on his Bajaj motor cycle from Sangareddy to Parvada village and when he reached Ramanthapur village, another motorcycle, hero honda bearing registration no.AP 28Z 2262 came in opposite direction and dashed against the motorcycle of the deceased, due to the impact of the same, the deceased sustained grievous head injury and succumbed to death on account of the injuries sustained by him. That as on the date of the accident, the deceased was aged 29 years, working as senior marketing

executive at Comfort Air Solutions and used to earning Rs.11,600/- per month. That he was contributing his income to his family and because of the untimely death of the bread winner, the claimants, who are his wife, children and parents lost the future income and support of the deceased, and hence, made a claim for Rs.20.00 lacs, as compensation.

4. The stand of the appellant-insurance company before the Court below was that there was no negligence on the part of the driver of the hero honda motor cycle which hit the motor cycle of the deceased. The insurance company also disputed insurance coverage of the hero honda vehicle in question as on the date of the accident. 6th respondent, who is owner of the offending vehicle was set ex-parte.

5. Learned counsel for the appellant-insurance company strenuously contended that the Court below failed to appreciate exhibits B-1 to B-2 wherein it is clearly mentioned that the period of risk coverage is from 28-01-2009 to 27-01-2010, whereas the accident took place on 17-01-2009 and as on the date of the accident policy was not in force, but without considering the same liability to pay the compensation was fastened on it, which is contrary to the evidence on record. Learned counsel also contended that the income of the

deceased is taken at Rs.8,000/- per month which is excessive and there is no basis for arriving to such conclusion and it is not in accordance with the settled law. It is also contended that the parents of the deceased are not dependents on the income of the deceased as his father is a pensioner.

6. On the other hand, learned counsel for the respondents-claimants submitted that considering the age and avocation and income of the deceased, the Court below rightly granted just compensation. Learned counsel also contended that the reasoning adopted by the Court below in fastening the liability on the appellant-insurance company also does not warrant any interference, as the same is based on evidence and therefore, the appeal is liable to be dismissed.

The points that arise for consideration in this appeal are:-

1. *Whether the accident occurred solely due to the fault of the driver of the offending vehicle in question.*
2. *Whether the compensation awarded by the Court below is excessive; and*
3. *Whether the appellant-insurance company is liable to pay the compensation in view of the defence taken by it that as on the date of the accident, there was no policy coverage to the offending vehicle.*

7. As regards the culpability in causing the accident, the Court below relied on the evidence of PW-3 eye witness, who stated to be at a distance of 300 meters, from the scene of accident, on the relevant date, when he was picking flowers in

the land, he saw two vehicles coming in opposite direction and while the vehicle driven by the deceased was going slowly, the vehicle driven by the driver of the hero honda motorcycle came in high speed and it appeared that the driver of the hero honda motorcycle was in a drunken state. Nothing contra could be elicited from the cross examination of PW-3. There was no rebuttal evidence adduced by the insurance company nor the 6th respondent to disprove the testimony of PW-3 that the driver of the hero honda motorcycle drove the vehicle at a high speed and that he was in a drunken condition. Considering this evidence, and also the contents in FIR and charge sheet, which are marked as Exs.A-1 and A-2, respectively, it was rightly concluded that the accident occurred solely due to the rash and negligent driving of the hero honda motorcycle vehicle by its driver and there was no contributory negligence on the part of the deceased.

8. As regards the quantum of compensation, as against the claim of Rs.20-00 lacs, the Court below awarded total compensation of Rs.19,36,000/-. It has come in the evidence of PW-2, proprietor of Comfort Air Solutions, where the deceased seemed to have worked as senior marketing executive, prior to the date of accident, that the deceased was

being paid an amount of Rs.11,600/- per month and he has been working in their organization from 2007 and had been alive, his salary would been increased. Ex.A-5 is the appointment letter of the deceased as marketing executive. Ex.A-6 is the pay slip of the deceased, indicate the gross salary at Rs.9,800/- per month, plus Rs.1,800/- towards conveyance allowance. The age of the deceased, as per the post mortem examination certificate, Ex.A-4 was 32 years. The Tribunal based on the evidence adduced i.e. Exs.A-5 and A-6 coupled with the evidence of PW-2, took the income of the deceased at Rs.8,000/- per month, though no supporting document could be filed in support of the version of the witness examined on behalf of the deceased. Added to this, Rs.4,000/- per month was taken anticipating the possible hike in the salary of the deceased in future, and thus the income of the deceased was taken at (Rs.8,000 + Rs.4,000 = Rs.12,000/-) Rs.12,000/- per month by applying capitalization method, which is erroneous. When there is no evidence as to the exact income of the deceased, the best course that it is to be adopted is to take recourse to the wages as stipulated under the Minimum Wages Act. None of the witnesses spoke about the qualification of the deceased as on the date of his death. Hence, the wages of an Helper in Electronics Industry, during

the relevant period is to be taken, which it is fixed at Rs.3,982.40 ps, per month as per GO Ms. No.99, Labour, Employment, Training and Factories (Lab.II), dated 11-10-2007, which can be rounded off to Rs.4,000/- and if by applying capitalization method, 50% of his income is added towards future prospects, *i.e.* Rs.2,000/- per month, the monthly income comes to Rs.6,000/-. Since the dependants of the deceased are more than 4 in number, 1/4th of his income can be deducted towards his personal expenses, after doing so, the actual contribution by the deceased comes to Rs.4,500/- per month, which annually comes to (12 x 4,500 = Rs.54,000/-) Rs.54,000/-. For the age group of victims, as per the decision of the Apex Court in SARLA VERMA vs. DELHI TANSPORT CORPORATION (2009 ACJ 1298), which was prepared by applying the ratio in Susamma Thomas, Trilok Chandra and Charlie cases, the multiplier to be used is as mentioned in column (4) of the Table in the said decision. As per the Table mentioned therein, the appropriate multiplier for the age group 31 to 35 years was “16” but the Tribunal has taken multiplier of “17” which is not correct, and if the correct multiplier of “16” is applied, the future loss of dependency comes to (12 x 4,500 = Rs.54,000 x 16 = Rs.8,64,000/-) Rs.8,64,000/-. In addition to

this, the claimants are also entitled to the compensation granted under other counts, awarded by the Court below, i.e. Rs.30,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection to the two children of the deceased and Rs.30,000/- towards loss of love and affection to the parents of the deceased. Hence, the claimants respondents are entitled to total compensation of Rs.9,64,000/- with interest at Rs.7.5 % per annum from the date of petition till the date of deposit. Accordingly, the total compensation granted by the Tribunal is reduced to Rs.9,64,000/- from Rs.19,36,000/-. So far as apportionment of compensation is concerned, the arrangement made by the Court below is maintained.

9. Now the point that remains to be considered is whether the defence of the insurance company that it has not issued the policy in respect of the motorcycle (crime vehicle) in question covering the risk period from 06-04-2008 to 05-04-2009 under the disputed cover note on 06-04-2008, can be upheld.

10. The contention of the learned counsel for the appellant-insurance company is that as on the date of the accident i.e. 17-01-2009, there is no policy coverage to the offending vehicle bearing registration no.AP 28 AZ 2262. Ex.B-1 is the insurance policy. The period of risk covered therein is from 28-

01-2009 to 27-01-2010. Ex.B-2 contains 10 leafs and one of the cover note issued is in respect of the offending motorcycle in question, which also states the period of risk started from 28-01-2009 to 27-01-2010. As per the disputed cover note, the period of risk covered from 06-04-2008 to 05-04-2009 and issued on 06-04-2008. The serial number of the disputed cover note and the serial number of the cover note filed by the insurance company are tallying. The year of manufacture of the motorcycle in question is of the year 2008. The disputed cover note stated to have been issued by the insurance company is in printed form, whereas the cover note under Ex.B-2 is blank and details are filled manually, which tally with the details on the disputed cover note, except the period of risk coverage.

11. To clinch the issue, it is necessary to scrutinize the evidence both oral and documentary adduced by the appellant-insurance company. RW-1 is the senior executive of the insurance company, whereas RW-2 is the internal audit head. As noted above, Ex.B-1 is insurance policy, Ex.B-2 is office copy of the cover note book, Ex.B-3 is extract of Form-24 of B-Register, Ex.B-4 invoice and Exs.B-5 & B-6 are correspondence between the insurance company and DPM printers. It has come in the evidence of RW-1 that their office

will supply the cover note books to their agents. He did not deny that Tirumala Motors, Sheirlingampally, is their agent. It has further come in his evidence that he do not know to which of their agents, they have supplied the cover notes book under Ex.B-2 which contained 10 leafs. He admitted that leaf at serial no.BZ0801525916 pertains to the offending vehicle in question and it is the last copy of the cover note. Admittedly, as per Ex.B-3 the offending vehicle was registered on 28-04-2008 and as per the cover note under Ex.B-2, issued on 28-01-2009, the offending vehicle was noted as "new". As on the date of issuing cover note under Ex.B-2, the offending vehicle was already registered. RW-1 could not explain as to why in their cover note under Ex.B-2 or in the policy under Ex.B-1, it was noted as "new" instead of mentioning the registered vehicle number of the offending vehicle. It has come in the evidence of RW-2, internal audit head, that their company placed order for printing 1000 cover note books to DPM printers, Pune, and the cover note books were supplied on 17-01-2009 and dispatched to Hyderabad office on 22-01-2009, and issuance of policy on 06-04-2008 does not arise.

12. Admittedly, the cover notes are supplied by the company to its agents and one of their agent is Tirumala Motors, Sheirlingampally. Nothing has come from the evidence of RW-

1 & 2 that they maintain a register of issuance of the cover notes to their agents. They could not state as to which cover notes with serial numbers were given to the Tirumala Motors. It is also not spoken to by them as to which of their agent has given the cover note under Ex.B-1 and the disputed cover note, which tally in all respects, except the period of risk coverage and the date of issue. Though fraud is alleged by the appellant-insurance company, but fraud is to be set at naught by the person who alleges fraud. In this case curiously, in all probability, the details of the agents, their address and other particularly will be with the insurance company and the insurance company failed to furnish all these details. In the absence of so doing, it cannot contend that fraud is played by the agent, when the very agent is their appointee and their authorized representative. As observed Madras High Court in NATIONAL INSURANCE COMPNAY LIMITED vs. M. NANDAN (2004 ACJ 1449) there is no rule or condition that whenever a client receives a policy from the agent, client has to go to office of insurance company to show the policy and ascertain its genuineness. In this case also as per disputed cover note, the offending vehicle has a policy and premium was also collected. If the agent does not remit the premium amount immediately

thereafter, the burden lies on the insurance company to ensure that the agent remits the premium amount received on its behalf. If there is delay in remitting the amount received as premium, the insurance company cannot escape its liability on that count. In this case, an effort was made by the claimants by filing interlocutory applications to call for the documents pertaining to agent's name, agent's license number, address of the agent, date of issuing agent license, termination of license if any, with date and the reasons for such termination of license. But no details were furnished in spite of the interlocutory applications being allowed. When the party on whom burden lies, to produce certain material, but fails to produce the same, an inference can be drawn against him. It is true that under Section 114 of the Evidence Act in the absence of a finding that the insurance company was in possession of the details with regard to their agents, an adverse inference cannot be drawn. But in this case, the claimants have filed interlocutory applications calling for certain information, which is material information. Law is well settled that no adverse inference is to be drawn against a party, unless in fact the party is in possession of document and fails to produce it. (***see Devidas vs. Shrishailappa AIR 1961 SC 1277***). In the counter filed by the appellant-insurance Company before the Tribunal no

specific plea was taken cover note BZ 0801525916 does not pertain to crime vehicle, though owner of the vehicle stated insurance policy bearing no. BZ 0801525916 pertains to motor cycle bearing registration no. AP 28 AZ 2262. The decision of this Court in **UNITED INDIA INSURANCE COMPNAY LIMITED, HYDERABAD vs. SYED SHAKEEL PASHA** (2004 (6) ALD 747) cited by the learned counsel for the appellant was rendered, altogether in a different set of facts. In that case it was observed that the learned Judge of the Tribunal blindly passed the award in a casual manner without verifying the recitals mentioned in the policy. In that case there was no coverage of risk as on the date of the accident, in spite of that, the learned Judge of the Tribunal proceeded to award compensation and under those circumstances the decision therein was held to be bad. It was also observed that the learned Judge of the Tribunal used to commit similar type of mistakes while dealing with the motor accident claims cases and used grant compensation as a measure of charity. But in the facts in this case are different. The Court below has made every effort to cull-out the truth and recorded a finding that the appellant-insurance company failed to discharge burden of proof in support of its allegation of fraud.

13. Appellate Court will not normally interfere with the reasoning given by the trial Court Judge only because a different view is possible. Claim arises under beneficial legislation and therefor any interpretation should be in favour of beneficiary. Even if two views are possible, one which is favourable to the beneficiary should be adopted.

14. On the above analysis, it is clear that the appellant-insurance company failed to substantiate its version. The appellant-insurance company is liable to pay the compensation being the insurer of the vehicle in question. Accordingly, the appellant-insurance company being the insurer and the 6th respondent being the owner of the offending vehicle are jointly and severally liable to pay the compensation amount the to claimants-respondents.

15. In the result, the appeal is partly allowed to the extend indicated above. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

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A.RAJASHEKER

REDDY, J

Dated : 27 -04-2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2545 of 2015

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