HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.390 & 1075 of 2013

COMMON JUDGMENT:

These two appeals are filed questioning Award dated 31.10.2012 in MVOP No.70 of 2010 on the file of IV Additional District & Sessions (FTC), Karimnagar.

2. M.A.C.M.A.No.390 of 2013 is filed by Insurance Company contending that Court below failed to record that insurance company is entitled for pay and recovery, whereas the other MACMA No.1075 of 2013 is filed by claimants questioning the quantum.

3. Parties are hereinafter referred to as claimants and insurance company for convenience sake and better understanding.

4. Claimants filed MVOP No.70 of 2010 under Section 163-A of M.V. Act, 1989 claiming compensation of Rs.5 lakhs for the death of Badugu Mohan @ Murali, driver of Tractor bearing No.AP-15-U-5481 belonging to Syed Younus @ Yousuf and the tribunal on a consideration of oral and documentary evidence, granted compensation of Rs.50,000/- only under Section 140 of M.V Act. According to claimants, their claim for Rs.5 lakhs is quite reasonable and even if income of Rs.40,000/- as per 163-A of M.V.Act is taken, compensation would come to Rs.5,10,000/- and as the claimants claimed only Rs.5 lakhs, trial court erred in refusing compensation under Section 163-A of M.V.Act.

5. On the other hand, advocate for Insurance Company

submitted deceased has no valid driving licnece therefore insurance company has no liability.

6. Brief facts leading to these two appeals are as follows:

One Badugu Mohan @ Murali (hereinafter referred to as "the deceased") was driver of Tractor bearing No.AP-15-U-5481 and that tractor was taken to Akkapalli temple to bring bricks and as the labourers were not available, the bricks could not be loaded and while he was returning back with empty tractor, due to his negligence tractor turned turtle, as a result, he fell down from the tractor and died on the spot and police registered a case and that legal heirs of the deceased filed claim petition contending that deceased was earning Rs.4,500/- per month and that both owner and insurance company are jointly and severally liable to pay compensation. To prove their case, wife of the deceased was examined as PW.1 and through her, 6 documents are marked and they are certified copy of F.I.R., certified copy of Inquest, certified copy of Postmortem examination report, certified copy of M.V.I report, certified copy of charge sheet and original Driving licence of deceased. On behalf of Insurance Company, Manager, legal Section is examined as RW.1 and Senior Assistant in the office of Insurance Company is examined as R.W.2 and they got marked 5 documents i.e., copy of insurance policy, office copy of legal notice dated 25.10.2010, postal acknowledgement card, R.C. of Tractor and R.C. of Trailer.

7. The main objection raised on behalf of insurance company is that the deceased had no valid driving licence to drive the vehicle at the time of accident and as the accident was due to negligence of the deceased himself the claim under Section 163-A of MV Act is not maintainable and at best he can only get under no fault liability. The tribunal accepted the objection of insurance

company and held that the application made under Section 163-A of M.V. Act is not maintainable and the claimants are entitled for compensation only under Section 140 of M.V. Act under no fault liability, because the accident was due to the negligent act of deceased himself.

8. Advocate for claimants submitted that petition under Section 163-A of M.V.Act is maintainable even if accident was due to the negligence of deceased and to support his argument, he relied on decisions of this Court in ***Nallaganthula Sathaiah and others***[1] and ***Haseena Sulthana and others v. National Thermal Power Corporation Ltd., and another***[2] and in both these decisions, this court upheld that the application under Section 163-A of M.V Act is maintainable. I n ***Nallaganthula Sathaiah'***s case (1 supra), this Court followed Supreme Court decisions in ***Rajesh v Rajbir Singh***[3], ***Sarla Verma v. Delhi Transport Corporation***[4] and ***Vimal Kanwar v. Kishore Dan***[5].

9. Advocate for insurance company has not disputed the principle laid down in the above referred two decisions. If those two decisions are applied tribunal was not right in denying the claim of claimants under Section 163-A on the ground that the deceased died due to his own negligence.

10. Now the point that would arise for my consideration is :

"What is the wages of the deceased as on the date of accident?"

POINT:

11. Advocate for claimants submitted that minimum wages

prescribed for Light Motor Vehicle driver as on the date of accident as per G.O.Ms.No.90, Labour Employment Training & Factories (LAB.II) dated 28.09.2007, is Rs.4,102/- and VDA applicable is Rs.947/- therefore that can be taken as wages of the deceased.

12. As per Section 163-A of M.V. Act, there is income ceiling of Rs.40,000/- and as the wages under Minimum Wages Act are exceeding to Rs.40,000/-. Court has to confine to Rs.40,000/- ceiling and if 1/3rd is deducted from out of Rs.40,000/- towards personal expenses of the deceased, the net income available for the purpose of calculating compensation is Rs.30,000/-

13. Admittedly, multiplier applicable to the deceased was '17' and if the calculation is made by applying multiplier to the annual income of Rs.30,000/-, it comes to Rs.5,10,000/- and the claim of claimants is only Rs.5 lakhs, therefore it can be rounded to Rs.5 lakhs.

14. The other objection of insurance company is that deceased has no valid driving licence as on the date of accident. But as seen from the record, driving licence of the deceased is marked as Ex.A6. Further as per the decisions of Hon'ble Supreme Court in ***S.Iyyapan v. United India Insurance Co. Ltd., and another***[6] and ***Nagashetty v. United India Insurance Company Limited and others***[7], a person having permanent driving licence to drive tractor is also competent to drive a tractor with a trailer attached to it for carrying goods and it is an effective driving licence. In view of these two decisions the objection of insurance company with regard to driving licence is not tenable.

15. For these reasons, I am of the view that claims tribunal erred in treating the claim under no fault liability and to that extent the award of the claims tribunal is to be set aside and the claimants are granted a sum of Rs.5 lakhs as compensation at rate of interest as granted by the lower Court and insurance company shall deposit the difference amount within three (03) months from the date of receipt of a copy of this order.

16. Accordingly, appeal filed by Claimants i.e., MACMA No.1075 of 2013 is allowed and appeal filed by insurance company i.e., MACMA No.390 of 2013 is dismissed. No costs.

Miscellaneous petitions, if any pending, in these appeals shall stand closed.

S. RAVI KUMAR, J

Date: 31-03-2015
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[1] 2015aACJ 2083

[2] 2007 ACJ 1832

[3] 2013 ACJ 1403 (SC)

[4] 2009 ACJ 1298 (SC)

[5] 2013 ACJ 1441 (SC)

[6] 2013 ACJ 1944

[7] 2001 (6) ALD 60 (SC)