

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 136 of 2013

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ORDER :

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This appeal is filed by the claimants against the Award of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Karimnagar dated 20.11.2012 in O.P.No.653 of 2010 for enhancement of compensation as well as fixation of liability on the 3rd respondent.

2. It is the case of the appellants that the first appellant is the wife, appellants 2 and 3 are the parents of the deceased Burla Venu, who died in a motor vehicle accident that occurred on 15.02.2010 at 16.30 hours at the outskirts of Thummanapalli Stage, Huzurabad Mandal. While the deceased Burla Venu was returning home along with one Nagavelli Praveen on a Pulsar motor cycle bearing No. AP 15 AM 1908 and when reached the outskirts of Thummanapaly village, the 1st respondent drove the lorry bearing no. AP 01V 0612 in a rash and negligent manner with high speed and dashed against the motorcycle of the deceased from front side. Due to which, the deceased hit an auto and fell down on the ground and sustained fatal injuries and died on the spot. On receipt of the complaint, the Police, Huzurabad registered a case in Crime No.39 of 2010 under Sections 304-A, 337 and 338 of IPC against the 1st respondent and filed charge sheet against him. That the deceased was aged 29 years, maintaining good health and that he was working as Assistant Professor in Computer Science in Kamala Institute of Technology and Science, Singapur and earning a sum of Rs.12,000/- per month. As a result of the death of the deceased, the appellants have lost their dependency. Therefore, the appellants have claimed an amount of Rs.30,00,000/- towards compensation for the death of the deceased.

3. That the 1st respondent is the driver of the offending lorry under

the employment of 2nd respondent in question and the offending lorry had been validly insured with the 3rd respondent insurance company, as such, claim is made against the respondents 1 to 3 jointly and severally. As the respondents 1 and 2 failed to file counter in spite of several opportunities, their right to file the counter was forfeited.

4. The 3rd respondent-insurance company filed counter opposing the claim of compensation stating that the accident occurred due to the negligence of the deceased himself. That the driver of the auto bearing No. AP 15Y 0523 was responsible for the accident, as such, the driver, owner and insurer of the said auto are necessary parties to the petition. It is also stated that the 1st respondent was not having valid and effective driving licence to drive crime lorry as on the date of accident as his driving licence had expired on 04.12.2009, whereas the accident occurred on 15.02.2010.

5. The trial Court basing on the evidence of P.Ws.1 to 3, R.Ws.1 and 2 and documents i.e., Exs.A1 to A7 and Exs.B1 to B4, granted compensation of Rs.11,28,000/- to the appellants with proportionate costs and interest at 7.5% per annum from the date of petition till the date of actual deposit against the 1st and 2nd respondents and the petition was dismissed against the 3rd respondent observing that there is no valid driving licence for the 1st respondent to drive the offending vehicle i.e., lorry, as such, the 2nd respondent owner is liable to pay compensation to the appellants.

6. Heard Sri Kota Subba Rao, learned counsel for the appellants and learned Standing Counsel for the 3rd respondent-insurance company.

7. Learned counsel for the appellants submit that even if there is no valid driving licence, the insurance company is liable to pay the compensation to the 3rd parties/claimants and later recover the same from the owner of the offending vehicle i.e., insured. But the Tribunal

has not taken the same into consideration and fixed liability on the 2nd respondent, who is the owner of the offending lorry. In support of his contention, he relied on the judgment reported in **National Insurance Co. Ltd., v. Swaran Singh and others** ^[1]. He also submits that as per the judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others** ^[2], the appellants are entitled for grant of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, but the Tribunal had erroneously granted Rs.5,000/- towards funeral expenses and Rs.15,000/- towards loss of consortium.

8. Though notices are served on the respondents 1 and 2, there is no appearance on their behalf opposing the appeal.

9. Learned Standing Counsel for the 3rd respondent submits that since the 1st respondent has no valid and effective driving licence as on the date of accident, the Tribunal had rightly fixed the liability on the owner of the offending lorry i.e., 2nd respondent, as such, no interference is called for. He also submits that subsequent to the judgment of Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others (supra)**, judgment of the Hon'ble Supreme Court reported in **Ramila Ben Chinubhai Parmar and others v. National Insurance Company and others** ^[3], an amount of Rs.50,000/- was granted for loss of consortium and funeral expenses.

10. It is to be seen only on the ground that the 1st respondent had no valid driving licence as on the date of accident, 2nd respondent, who is the owner of the offending lorry was alone made responsible to pay the compensation to the appellants. In **National Insurance Co. Ltd., v. Challa Bharathamma and others** ^[4] the Hon'ble Supreme Court held as follows:

“13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some

cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.”

The Hon'ble Supreme Court in **Ramila Ben Chinubhai Parmar and others v. National Insurance Company and others (supra)**, awarded total amount of Rs.50,000/- towards loss of consortium and funeral expenses. In view of the above judgment, the order of the tribunal is modified to the extent of granting of compensation towards loss of consortium and funeral expenses. The 3rd respondent-insurance company is to pay compensation to the appellants and later recover the same from the respondents 1 and 2 in view of judgment in **National Insurance Co. Ltd., v. Challa Bharathamma and others (supra)**.

In view of above facts and circumstances, the appellant No.1 is entitled for an amount of Rs.50,000/- towards loss of consortium and funeral expenses in addition to Rs.11,28,000/- granted by the tribunal and the 3rd respondent is to pay the said compensation to appellants/claimants and recover the same from the owner-2nd respondent as per the judgment reported in **National Insurance Co. Ltd., v. Challa Bharathamma and others (supra)**.

Accordingly, this Appeal is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if

any, pending in this MACMA shall stand dismissed.

A.RAJASHEKER REDDY, J

07.01.2016.

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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No.136 OF 2013

Date: 07-01-2016

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- [\[1\]](#) AIR 2004 Supreme Court 1531
- [\[2\]](#) (2013) 9 Supreme Court Cases 54
- [\[3\]](#) 2014 ACJ 1410
- [\[4\]](#) 2004 ACJ 2094