THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 65 of 2012

JUDGMENT:

This appeal is filed by the Bajaj Allianz General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988, assailing the Judgment and Decree dated 27.07.2011 passed in O.P.No.146 of 2009 by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, at Hyderabad (for short, 'the Tribunal') awarding compensation of Rs.9,00,000/- on account of the death of a minor boy in a motor vehicle accident.

2. Brief facts of the case are that on 27.08.2006, the Vinayaka Chavithi Day, the deceased-Ramavath Sudheer along with his friends started from Vijayawada in a Fiat Palio Car and as the tyre of the car got burst, they kept the car in Bhashyam School Playground, Vijayawada, and thereafter they took Tata Safari vehicle bearing No.AP 16AL T/R 3667 and proceeded to Manginapudi beach of Machilipatnam. The driver of the said vehicle had driven it in a rash and negligent manner at the beach and as a result, the said vehicle turned turtle and the deceased who was sitting by the side of the driver fell out of the vehicle and sustained grievous injuries and died on the spot. The driver of the offending vehicle was one Bokka Murali Kiran Kumar, and the crime was investigated by CBCID and they filed charge sheet against the driver for his rash and negligent driving resulting in the vehicle turned turtle and the deceased who was sitting by the side of the driver fell out of the vehicle and sustained grievous injuries and died on the spot. The deceased was 17 years old by the date of accident and passed SSC examination in first division, and he had bright future and in view of his death, the petitioners filed the claim petition under Section 166 of the Motor

Vehicles Act, 1988, claiming compensation of Rs.17,00,000/- against respondents 1 and 2, the owner and the insurer, respectively, of the crime vehicle.

3. The respondent No.1-M/s C.B. Agros and Jewelries Pvt. Ltd, is the owner of the crime vehicle. He filed counter denying the negligence on the part of the driver of the crime vehicle, and stated that he was having valid driving licence at the time of accident, and the vehicle was duly insured with the 2nd respondent-Bajaj Allianz Insurance Co. Ltd., covering the date of accident, and if any award is passed, that is liable to be paid by the insurance company.

4. The respondent No.2-insurer filed its counter stating that the offending vehicle Tata Safari bearing registration No.AP 16AL T/R 3667 is having valid insurance. The driver of the crime vehicle was not having valid and effective driving licence at the time of the accident. The respondent No.1 handed over the possession of crime vehicle knowing well that the driver did not possess valid driving license as on the date of accident. The 1st respondent alone is liable to pay the compensation. According to reliable information of 2nd respondent, the deceased was driving the offending vehicle at the time of accident. If the deceased being occupant of the car may be traveling as a gratuitous passenger, in case he was not the driver of the crime vehicle at the time of accident. As a gratuitous passenger under Section 147 of the Motor Vehicles Act, the insurance policy does not cover the risk of the deceased. The deceased cannot be termed as third party for coverage under the policy. The present petition is filed by the petitioners-claimants in collusion with respondent No.1-owner of the crime vehicle. The 2nd respondent denied the age of the deceased and his qualification of

studying Intermediate at Bhashyam Junior College, Vijayawada, and stated that the claim of the appellant is highly excessive.

5. The Tribunal, on consideration of the pleadings, has framed the following issues:

> (i) Whether the accident took place on 27-08-2006 at about 5/30 p.m. due to rash and negligent driving by the driver of Tata Safari vehicle bearing No. AP 16AL T/R 3667 LMV?
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> (ii) Whether the Petitioners are entitled for compensation and, if so, to what amount and from whom?
>
> (iii) To what relief?

6. The Tribunal has examined PWs.1 to 4 on behalf of petitioners and marked Exs.A1 to A18; and examined RWs.1 and 2 on behalf of respondents and marked Exs.B1 and B2.

7. On consideration of the evidence, the Tribunal has answered issue No.(i) holding that the accident occurred due to the rash and negligent driving by the driver of the crime vehicle, i.e., Bokka Murali Kiran Kumar, and answered issue No.(ii) holding that the petitioners are entitled for compensation of Rs.9,00,000/- as against their claim of Rs.17,00,000/-, and answered issue No.(iii) allowing the petition accordingly.

8. Aggrieved by the impugned judgment and decree passed by the Tribunal in O.P.No.146 of 2009, the respondent No.2-Bajaj Allianz General Insurance Company Limited has preferred this appeal, denying its liability and challenging the quantum of compensation.

9. Heard the arguments of Sri T. Mahendar Rao, learned counsel for the appellant-insurance company; and Sri Vedula Venkatarama, learned Senior Counsel, and Sri D. Jagadeeswar Rao, learned counsel on record for the respondents-claimants.

10. The points arising for consideration in this appeal are:

(i) Whether the accident occurred due to the rash and negligent driving by the driver of the crime vehicle?

(ii) Whether the deceased was the driver of the crime vehicle or Bokka Murali Kiran Kumar was the driver at the time of the accident?

(iii) Whether the compensation awarded by the Tribunal is excessive?

11. Points (i) and (ii):

The learned counsel for appellant contended that the accident occurred due to the rash and negligent driving of the deceased but the Tribunal held that Bokka Murali Kiran Kumar was the driver and he was responsible for the accident, which is going against the documents Exs.A1-FIR, Ex.A2-Panchanama, Ex.A-3-PME report, and Ex.A10-CC of MVI Report. It is argued that these documents reflect that the deceased was the driver of the crime vehicle, as per the the investigation conducted by the police. Ex.A1 is the FIR lodged by the one of the inmates of the crime vehicle Tata Safari. It is the case of the appellant that the deceased and his friends traveled in the Tata Safari at the time of the accident. One of the inmates of the Tata Safari is the complainant. Basing on his complainant Ex.A1-FIR was issued. According to the appellant, the Ex.A2-Inquest Panchanama would show that there was steering press injury on the chest of the deceased, and the accident occurred while the deceased was driving the crime vehicle along with his friends, and as per Ex.A10-MVI report, the deceased was the driver of the crime vehicle at the time of accident. Learned counsel for the appellant, placing reliance on the above documents Exs.A1, A2 and A10, and the evidence of RW1 (T.Somaraju), the investigator appointed by the Insurance company to investigate the matter, and RW2 (Penumudi Ramanujamma), who was an eyewitness to the accident examined before the Criminal Court, argued that the deceased was the driver of the crime vehicle at the time of the accident, but at the instance of the father of the deceased who was working as Superintendent of Police in Police Department, the investigation was transferred from regular police to the CBCID and after the intervention of the CBCID, one Bokka Murali Kiran Kumar was introduced in the place of the deceased as driver of the crime vehicle by showing him in the charge sheet filed by CBCID and therefore false evidence was adduced in this case for getting compensation by the claimants. In support of his contentions, the counsel for the appellant placed reliance on **Agnuru Jaya Ramulu v. Mohammed Afzal Miyan and another**[1], with regard to adducing false evidence in judicial proceedings. It is contended by learned counsel for appellant that PW1, in collusion with the witnesses and investigation agency made a false claim and gave false evidence and brought into existence false documents.

12. The learned counsel for the respondents-claimants argued that the CBCID have investigated the case thoroughly and filed charge sheet holding that one Bokka Murali Kiran Kumar was the driver of the crime vehicle at the time of accident, and due to his rash and negligent driving the accident has occurred. It is further argued that the Tribunal has placed reliance on the investigation conducted by the CBCID and arrived at a conclusion that Bokka

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[1] 2006 ACJ 855

Murali Kiran Kumar was the driver of the crime vehicle and there are no grounds to interfere with the findings of the Tribunal.

13. As a matter fact the findings of the Tribunal with regard to the rash and negligent act on the part of the driver of the crime vehicle are concerned, it clearly reveals that the Tribunal placed reliance on the charge sheet Ex.A7 filed by the CBCID after conducted thorough investigation into the matter by registering cases against the driver and inmates of the crime vehicle for suppressing the fact that Bokka Murali Kiran Kumar was the driver of the crime vehicle at the time of accident. It is also pertinent to note that nearly 51 witnesses were examined by the CBCID during the investigation and registered cases against the driver and also the inmates of the crime vehicle for offences punishable under Sections 337, 304(A) r/w 201 IPC r/w 34 IPC in Crime No.139 of 2006, and filed charge sheet.

14. The Tribunal has preferred the investigation of the CBCID as it was a better investigation agency and placed reliance on the investigation and decided that Bokka Murali Kiran Kumar was the driver of the crime vehicle at the time of accident and that he had driven the crime vehicle in a rash and negligent manner.

15. Learned counsel for the appellant further contented that the deceased was the driver of the crime vehicle as he received steering press injury on his chest, and the same is reflected in the post-mortem examination report, and the name of the deceased appear in the documents Ex.A1, A2, the FIR and Inquest Panchanama.

16. Infact the contention raised by the learned counsel for the appellant was based on the documents Exs.A1, A2, A3 and A10. The Tribunal has

opined that the investigation done by the CBCID is considered to be more professional investigation than the investigation done by regular police.

17. Part of the investigation was done by the police at the initial stages and later the investigation was taken up by CBCID. In fact, the entire investigation done by the police and CBCID culminates in the filing of charge sheet. There is no material brought on record to show that the CBCID have found any fault with the investigation done by the regular police. It is only the suspicion of the appellant-insurance company that the CBCID have planted the driver Bokka Murali Kiran Kumar in order to facilitate the claimants to get compensation in this matter. This version cannot be accepted for the reason that the sea of suspicion has no shore. No amount of suspicion can take the place of proof. There is no rebuttal evidence adduced by the appellant to prove that the investigation done by the CBCID is not on correct lines. In fact, there are no malafides attributed to the CBCID but the malafides are attributed only against the claimant, the father of the deceased, basing on the circumstances appearing in the Ex.A1 to A3 and A10. The investigation under documents Exs.A1, A2, A3 and A10 has culminated in filing of charge sheet under Ex.A7. There is no evidence adduced by the insurer to prove that the investigation done by the CBCID is not proper. The two witnesses examined on behalf of insurance are RW1, the investigator appointed by the insurance company who placed reliance on Ex.A1 to A3 and A10, gave his evidence explaining the contents of the documents. He is neither an eyewitness nor anyway connected with these documents. Therefore, his evidence is of no consequence in this matter. RW2 was said to be an eye witness to the accident. Her testimony does not appear to be trustworthy in the light of her cross examination. The Tribunal opined that the investigation done by CBCID is considered to be more professional than the regular police. Further, the testimony of PWs.2 and 3

who are eyewitnesses to the accident was relied by the Tribunal in arriving at the conclusion that the investigation done by the CBCID by filing charge sheet showing the driver of the crime vehicle as Bokka Murali Kiran Kumar does not require any interference.

18. As far as the standard of proof in cases of motor vehicle accidents is concerned, it is that of "preponderance of probabilities" and not "beyond reasonable doubt". This is a case filed by the claimants claiming compensation on account of the death of their son aged 17 years. The appellant attributed malafides to the claimants that they misdirected the investigation for their benefit. The Tribunal relied upon the investigation conducted by the CBCID. It is also pertinent to note that the Motor Vehicle Act, 1988, is a social welfare and beneficial legislation. Therefore, keeping in view the peculiar circumstances of this case, it is not necessary to go further into the aspects of investigation done by the police and CBCID. Moreover, this is a case in which the accident occurred in the year 2006 and at this point of time this Court is of the considered view not to delve deep into the investigation done by both the investigating agencies.

19. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in coming to the conclusion that the driver of the crime vehicle at the time of accident was Bokka Murali Kiran Kumar and because of his negligence the accident has occurred. Therefore, the decision in *Agnuru (1 supra)* is not applicable to the facts of the present case.

20. Therefore, points (i) and (ii) are answered in favour of the respondents-claimants, and against the appellant-insurance company.

21. Point No. (iii):

It is argued on behalf of the appellant-insurance company that the compensation awarded by the Tribunal is excessive as the income of the deceased was taken at Rs.8,000/- per month though he was a student by the date of accident.

22. In the light of the decision rendered in Kishan Gopal v. Lala[2], and Sarla Verma v. Delhi Transport Corporation[3], the compensation awarded by the Tribunal does not require any interference as it is within the ratio laid down in these decisions. Further, keeping in view the evidence of PW4-teacher that the deceased was a bright student and, had he been alive, he would have bright future prospects, the notional income of Rs.8,000/- per month taken by the Tribunal for assessment of compensation on account of the death of the deceased boy aged about 17 years by the date of accident is not on higher side. Therefore, the compensation awarded by the Tribunal taking the income of the deceased at Rs.8,000/- per month does not require any interference.

23. As far as the rate of interest awarded by the Tribunal at 9% per annum is concerned, it appears to be on higher side in the light of the decision rendered in Dharampal v. U.P. State Road Transport Corporation. Therefore, the rate of interest awarded by the Tribunal is modified by reducing it to 7.5% per annum from the date of petition till realization.

[2] (2014) 1 SCC 244
[3] (2009) 6 SCC 121

24. Therefore, the point No.(iii) is answered accordingly by confirming the compensation amount, and modifying the rate of interest by reducing it from 9% per annum to 7.5% per annum.

25. IN THE RESULT, the appeal is partly allowed by modifying the Judgment dated 27.07.2011 in O.P.No.146 of 2009 passed by the Tribunal by reducing the rate of interest from 9% to 7.5% per annum, and the rest of the Judgment passed by the Tribunal shall be intact. The appellant-insurance company is directed to deposit the compensation amount as per the Award within two months from the date of receipt of a copy of this order and on such deposit the respondents 1 and 2 are permitted to withdraw the amount. No costs. Pending miscellaneous petitions, if any, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

14th July, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 65 of 2012

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