HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 499 of 2011
&
CROSS OBJECTIONS

COMMON JUDGMENT:

1. The appellant/National Insurance Company Limited, aggrieved by the Award and decree dated 31.03.2010 passed in OP.No.184 of 2007 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Fast Track Court, Mahaboobnagar, preferred this appeal besides other grounds, on the ground that the Tribunal erred in fixing the liability on the appellant/Insurance company having observed that the bus bearing No. KA.31 2974 was hired with KSRTC and that only KSRTC is liable to pay the compensation.

2. Respondents 1 to 3 in the appeal, who are claimants in OP, filed Cross Appeal mainly on the grounds that the Tribunal erred in assessing the income of the deceased only at Rs.15,000/- per annum despite the deceased was getting income from his own agricultural land of 20 acres besides earning income of Rs.5,000/- per month by doing business and thereby committed erred in not granting full claim of Rs.4.00 lakhs

3. Respondents 1 to 3 in appeal and petitioners 1 to 3 in Cross Appeal are the claimants in OP.NO.184 of 2007 whereas, appellant in appeal and first respondent in Cross Appeal is the second respondent in the said OP. Inasmuch as both the appeal

and cross appeal arise out of the same award passed in OP.No. 184 of 20018, they are heard together and being disposed of by this common judgment.

4. The facts culled out from the claim of respondents 1 to 3 in appeal/claimants are as follows: on 28.05.2016 at about 4,30 AM while the deceased and his son, second respondent, were travelling in the bus bearing No. KA.31.2974 which was hired to KSRTC, the driver having driven the said bus in rash and negligent manner, dashed the stationed lorry bearing No. KA.28A2066, as a result of which, the deceased and others sustained severe injuries. Immediately, all the injured were shifted to K.M.C. Hospital, Hubli and while undergoing treatment, the deceased-Gattu Narasappa died on 28.5.2006 at about 6.30 A.M.

5. The main contention of the appellant/Insurance Company before the Tribunal was that the driver of the offending bus was not possessed valid and effective driving licence at the time of accident and by entrusting the said bus to that driver, the owner- fourth respondent herein, who was first respondent in OP, violated the terms and conditions of the policy. It was further alleged that the accident was not occurred due to the rash and negligence of the driver of the bus, but it was occurred only due to the negligence of the driver of the lorry bearing No. KA.28A.2066 as it was parked without observing the rules of the road.

6. The Tribunal having considered the pleadings of rival parties framed the following issues for settlement:

1. Whether the accident in issue resulted due to the rash and negligence of the driver of Respondent No.1. If so whether the Gattu Narsappa died in the accident as claimed by the petitioners ?
2. Whether the petitioners are entitled to claim compensation ?
3. To what relief ?

7. In order to prove their claim, respondents 1 to 3/claimants examined P.Ws.1 to 3 and got marked Exs.A.1 to A.5 on their behalf. On behalf of the appellant/Insurance Company and owner of the offending bus/fourth respondent, no oral evidence was adduced, however Ex. B.1 policy was got marked with consent.

8. The Tribunal having heard the learned Counsel on either side and considered the evidence on record, allowed the appeal in part by awarding compensation of Rs.1,42,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit in the Court and directed the appellant-Insurance Company to pay the said amount within one month.

9. The main contention of the appellant/Insurance Company in the appeal is that since the bus in which the deceased travelled at the time of accident stood hired to KSRTC,

it is not liable to pay any compensation and KSRTC is only liable to pay compensation.

10. The main contention of the claimants/petitioners in Cross Appeal is that the Tribunal erred in assessing the income of the deceased at Rs.15,000/- per annum despite the evidence of P.Ws.1 to 3 that the deceased was getting income from his own 20 acres of agricultural land besides earning Rs.5,000/- per month through milk business.

11. Now the points that arise of consideration are, whether the Tribunal committed error in assessing the income of the deceased; whether respondents 1 to 3/claimants are entitle to receive amount in toto; and whether the appellant/Insurance Company is entitled to be absolved from its liability inasmuch as offending bus was hired to KSRTC.

12. The contention of both the parties is that they are not disputing the negligence on the part of driver of the bus bearing No. KA 31.2974 hired to KSRTC as well as driver of the stationed lorry bearing No. KA.28A.2066. As per the claim of respondents 1 to 3/claimants, second respondent herein who is the son of the deceased was travelling in the bus as on the date of accident i.e. on 28.05.2006. P.W.1 is none other than the wife of the deceased. P.W.1 deposed in her evidence as stated in the claim petition. During her cross examination, she admitted that she was not the

eye witness to the accident. She spokes that her son travelled along with her husband, deceased herein.

13. P.W.3 is an independent witness, who also travelled in the offending bus. The evidence of P.W.2 was that on 27.05.2006 at about 7.00 PM, he along with his deceased father-Ghattu Narsappa boarded the offending bus to go to Hubli. The said bus was hired to KSRTC. The evidence of P.W.3 is that on 25.05.2006 at about 11.30 PM, he along with his wife, daughter, elder sister, his son-in-law and others were waiting for the bus and at 11.45 PM they boarded the offending bus.

14. The evidence of P.W.2 is corroborated with the evidence of P.W. 3 and their evidence is consistent that at about 4.30 AM on 28.05.2006, the driver of the offending bus drove in rash and negligent manner and dashed the stationed lorry bearing No. KA.28A. 2066 by same direction in the limits of Annageri Police Station of Karnataka State, as a result of which, son-in-law of P.W.3, Siddilingaiah, Chinnabasavaiah Guggarimuth died and others sustained injuries. In all, 30 members of the bus received minor injuries. P.W.3 gave complaint to the police. The same was also deposed by P.W.2. Ex. A.1 is the copy of FIR, Ex. A.2 is the copy of charge sheet and Ex.A.5 is the MVI report. In Ex.A.5, the Motor Vehicle Inspector noted that he inspected the vehicle at 3.00 PM of 30.05.2006 and noted damages occurred to the stationed lorry and damages occurred to the offending bus

No.KA.31.2974 and opined that the accident occurred was not due to any mechanical defect of the motor vehicles involved in the accident. The investigation officer, after thorough investigation filed charge sheet, Ex. A.2 finding that the accident occurred due to the negligence on the part of the driver of the bus itself. P.W.3 also stated that at the time of accident, 60 passengers travelled in the bus and that the lorry to which the bus dashed was parked on the left side of the road and parking lights were also blinking. Therefore, the contention of the appellant-Insurance Company that the driver of the lorry has not followed rules is untenable.

15. There is cogent and convincing evidence of P.Ws.2 and 3 besides documentary evidence at Exs.A.1 to A.3. Though the appellant-Insurance Company took the plea that the accident occurred due to the negligence on the part of the driver of the bus bearing No. KA 31.2974 and on the part of the driver of the stationed lorry bearing No. KA 28A 2066 in parking the lorry without following the road rules, but, on account of the same, the appellant-Insurance company did not choose to adduce either oral or documentary evidence in support of its plea. The material on record clinchingly goes to suggest that when the bus was fully loaded with passengers and parking lights of the stationed lorry were blinking, at that time, the driver of the bus should have taken proper care and caution in driving the bus, more so, when parking lights of the lorry were blinking, it should have gone right side of

the road, but, the driver of the bus failed to do so, and dashed the stationed lorry.

16. The Tribunal having considered the evidence of P.Ws.1 to 3 and documentary evidence at Exs.A.1 to A.3 & A.5, and, after elaborate discussion and marshalling the facts, came to the right conclusion that the evidence of P.Ws.1 to 3 categorically established that due to rash and negligent driving of the driver of the offending bus, the accident occurred. The appellant-Insurance Company to rebut the same, did not adduce any evidence, except marking Ex. B.1 policy and kept quite. In the absence of any rebuttal evidence, the Tribunal came to the right conclusion that the accident occurred due to the rash and negligent driving of the bus bearing No.KA.31.2974 which was hired to KSRTC. The said finding of the Tribunal is valid, legal and do not suffer from any legal infirmities.

17. With regard to the driving licence, the appellant-Insurance Company has not discharged its obligation by placing any material showing that it has discharged its burden by issuing notice to the owner of the offending bus or its driver calling them to produce copy of the driving licence, copy of RC, permit of the bus and also hire agreement with the KSRTC. The appellant-Insurance Company despite taking plea did not adduce oral and documentary evidence in regard thereto and accordingly it failed to establish that the driver of the bus did not possess valid and

effective driving licence at the time of accident. In the absence of oral and documentary evidence, the contention of the appellant-Insurance Company that the driver of the offending bus did not possess valid and effective driving licence and knowing the same, the fourth respondent, owner of the offending bus, entrusted the vehicle to him, which amounts to violating the terms and conditions of the policy, does not stand in the eye of law.

18. The contention of respondents 1 to 3/claimants is that apart from the deceased was getting income from his own 20 acres of agricultural land, he was also earning Rs.5,000/- per month by doing milk business. In the case of T.RAMA KRISHNA Vs. VALLURI BABU RAO & ORS {2016 (3) L.S. 383} relied on by the claimants, it was held that *in the absence of proof of earnings, minimum of Rs.3000/- per month can be taken. The accident occurred therein was nearly eight years after the expression. Thus it can safely be taken at Rs.3,500/- per month and if such is taken into consideration, the compensation to which the claimants are entitled to Rs.2,60,000/-.* In the case on hand, evidence of P.W.1 is that prior to the accident, her husband was hale and healthy, aged 47 years and was earning Rs.5,000/- per month by doing milk business and was possessed 20 acres of agricultural land, through which, he was earning Rs.2,00,000/- per year. During her cross examination, she admitted that she had not filed any proof to show that her husband was earning Rs.5,000/- per month by doing milk business as well as proof for the income earning from

the agriculture. P.W.2, son of P.W.1 and deceased, did not whisper about the income of his deceased father. No documentary evidence such as adangal copy or copy of land revenue record or any supporting evidence was produced by P.Ws.1 and 2 in proof of income of the deceased as stated supra.

19. Similarly P.Ws.1 and 2 did not produce any documentary evidence in proof of income of the deceased earning Rs.5,000/- by doing milk business. Since there is no documentary evidence in proof of income of the deceased, the Tribunal assessed the income based on II Schedule of MV Act notionally fixing at Rs.15,000/- per annum and calculated payable compensation at Rs.1,30,000/-. Besides that, the Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.5,000/- towards consortium and Rs.5,000/- towards pain and suffering. In all, the Tribunal awarded Rs.1,42,000/-. The same requires modification in view of the decision in T. RAMAKRISHNA (supra) relied on by the respondents 1 to 3/claimants.

20. As per the evidence of P.Ws.1 and 2, the deceased was 47 years and also as mentioned in Ex.A.3-Charge sheet. Following the decision of the Apex Court in LATHA WADHAWA Vs. STATE OF BIHAR {(2001) 8 SCC 197} which was relied on by this Court in the case of T.RAMA KRISHNA (supra), in the absence of any proof of income and as the accident occurred was nearly four years after expression, monthly income of the

deceased can safely be taken at Rs.3,500/- or Rs.42,000/- per annum. Out of which, 1/3rd has to be deducted towards his personal expenses and the remaining balance of Rs.28,000/-per annum is to be taken as the amount spent towards his family expenses. The Tribunal considered that the deceased was 47 years as on the date of accident. Following the decision of the Apex Court in SARALA VERMA vs. DTC {(2009) 6 SCC 121} the appropriate multiplier applicable for the age of the deceased is '13'. If the same is applied, the loss of dependence would come to Rs.3,64,000/-.

21. Further, the Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.5,000/- towards consortium and Rs.5,000/- towards pain and suffering. The Apex Court in NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND ORS (2017 ACJ 2700) held that the compensation awarded under the conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Accordingly the compensation awarded by the Tribunal towards funeral expenses, loss of consortium and pain & suffering is modified and following the decision of the Apex Court referred to above, I hereby award Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively under the aforesaid heads.

22. Thus, in all, respondents 1 to 3/claimants are entitled to receive compensation of Rs.4,34,000/-.

23. In NAGAPPA Vs. GURUDAYAL SINGH AND ORS {(2003) 2 SCC 274}, the Apex Court held that in appropriate cases, where the evidence brought on record, if the Tribunal/Court considers that the claimants are entitled to get more compensation than the claimed, the Tribunal/Court may pass such Award. The only embargo is, it should be just compensation, that is to say, it should neither arbitrary, fanciful nor unjustified from the evidence. The same view was thereafter reiterated by the Apex Court in RAJESH AND OTHERS Vs. RAJBIR SINGH AND OTHERS {(2013) 9 SCC 54}.

24. In view of the law laid down by the Apex Court in the aforementioned decisions, I am of the opinion that in the case on hand, the Tribunal erroneously took the income of the deceased at Rs.15,000/- per annum and thereby it granted meager compensation under the conventional heads. In view of the erroneous conclusion, the Tribunal came to the conclusion that the claimants are entitled to Rs.1,42,000/-, but, whereas, as per law and facts, they are entitled to the compensation of Rs.4,34,000/-. By relying on the above decisions, I find the compensation amount of Rs.4,34,000/- awarded hereinabove is just compensation for which the claimants are entitled to.

25. The contention of the appellant-Insurance Company is that KSRTC alone is liable to pay the compensation and it is not liable to pay any compensation as the offending bus was hired to KSRTC. As already discussed herein above, no one was examined on behalf of the appellant-Insurance Company or owner of the offending bus, who is Respondent No.4 in the appeal. No single document was produced by them, except marking insurance policy as Ex.B.1, which was issued by the appellant-Insurance company in the name of fourth respondent herein, who was the owner of the offending bus, which was in force with effect from 15.09.2005 to mid night of 14.09.2006, whereas the accident occurred on 28.05.2006, by which date Ex.B.1-policy was in force. In the case of T.RAMARKSIHAN (supra) relied on by respondents 1 to 3 in appeal/claimants, referred supra, it was held fixing the joint liability on the owner, RTC and insurer so as to recover any payment made by the owner or RTC from the insurer for the liability to indemnify from the policy once covered the risk,

26. The Apex Court in UPSRTC Vs. KULSUM {(2011) 8 SCC 142} referring to the provisions of the Act and definition of ‘owner’ and the ‘lessee’’ of the hired vehicle will not come within the definition of owner for not a transfer of ownership within the meaning of Section 2(30) of the MV Act and once there is insurance and the risk is covered, the insurer has to indemnify and the requirements of intimation of change of ownership

contemplated by Section 157 of the Act has no strict application for not a transfer of ownership and thereby the insurer is liable jointly with the hirer and hiree. The said decision was followed while resolving the controversy of the conflicting expressions of 'owner' etc., and decision of this Court in APSRTC Vs.B.KANAKARATNABAI {2013 (1) ALD 644} wherein it was held that insurer is liable to indemnify.

27. In RIKHI RAM & ANR Vs.SUKHRANIA AND OTHERS (AIR 2003 SC 1446) the three judge Bench of the Apex Court on the scope of third party risk and liability of insurer observed that the liability of the insurer does not cease in the absence of even intimation of transfer of vehicle to insurance company in directing the insurer to pay, however, left open to recover from the insured or from the transferee. Further, in the case of MANAGING DIRECTOR, KSRTC Vs. NEW INDIA ASSURANCE COMPANY LIMITED {(2016) 2 SCC 382}, the Apex Court observed that insurer has to indemnify from the joint liability of the owner and the lessee RTC of the vehicle insured with the insurer even there is lack of intimation of the lease from the owner to the insurer and in fixing the joint liability, the insurer has to indemnify. It was held therein that the registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the

claimants from the owner as stipulated in the agreement or from the insurer.

28. The KSRTC to whom the offending bus was hired was not made as a party to the main OP as well as the consequential appeal before this Court. The alleged hire agreement between the owner of the offending bus and KSRTC was also not placed before the Tribunal as well as before this Court for consideration. In view of the elaborate discussions on the law laid down by the Apex Court in the foregoing paragraphs and by virtue of the policy Ex. B.1, the Insurance Company cannot be absolved from its liability even though the bus was hired to KSRTC. As on the date of accident, Ex.B.1 policy was in force. The appellant-Insurance Company as well as the fourth respondent-Owner are jointly and severally liable to pay the compensation.

29. Accordingly, the appeal preferred by the Insurance Company is partly allowed, setting aside and modifying the Award and decree dated 31.03.2010 passed in OP.No.184 of 2007 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Fast Track Court, Mahaboobnagar to the extent of liability in payment of compensation. Consequently, the owner-fourth respondent in appeal and Insurance Company-appellant are liable to pay the compensation to the claimants jointly and severally.

30. Further, in view of the foregoing discussion, the Cross-Appeal preferred by the Cross Objectors/Respondents 1 to 3 in appeal/claimants is allowed setting aside and modifying the Award and decree dated 31.03.2010 passed in OP.No.184 of 2007 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Fast Track Court, Mahaboobnagar to the extent of awarding compensation and consequently it is here by held that respondents 1 to 3 in appeal/Cross objectors/claimants are entitled to receive compensation of Rs.4,34,000/- with interest at 7.5% per annum from the date of petition i.e. 21.04.2007 till the date of deposit.

31. Out of the aforesaid compensation, Rs.2,34,00/- is apportioned to the first respondent/first claimant (wife of the deceased) and Rs.1,00,000/- each is apportioned among respondents 2 and 3/Claimants 2 and 3.

32. The Insurance Company and Owner—respondents in Cross Appeal are directed to deposit the compensation amount awarded hereinabove jointly and severally, deducting the amount if any already paid, within thirty days from the date of receipt of a copy of this judgment.

33. On such deposit, the first respondent/first claimant is entitled to withdraw 50% of her apportioned share, after adjusting

the amount already paid, and the remaining her share shall be kept in FDR of any nationalized bank.

32. Similarly, respondents 2 and 3/Claimants 2 and 3 are permitted to withdraw Rs.50% each form their respective shares, after adjusting the amounts already paid and the remaining their respective share amounts shall be kept in FDRs of any nationalized bank.

33. Advocate fee is fixed at Rs.2,500/-

34. Miscellaneous petitions pending consideration if any in the appeal as well as Cross Objections shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 08th December, 2017.
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