HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1250 OF 2010

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is arising out of the order and decree dated 03.07.2009 passed in M.V.O.P.No.871 of 2007 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge) at Warangal (for short, the Tribunal).

2. The appellants are Manager and Divisional Manager of United India Insurance Company Limited, who are respondent Nos.2 and 3 in M.V.O.P.No.871 of 2007. Respondent Nos.1 and 2 herein are the claimants filed the above MVOP under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), claiming compensation of Rs.6,00,000/- on account of the death of Narsinglal in a motor vehicle accident occurred on 19.02.2007. Claimants are the mother and sister of the deceased.

3. Heard Sri E.Venugopal Reddy, learned counsel for the appellant and Smt.P.Sakuntala, learned counsel for respondent Nos.1 and 2.

4. The brief facts of the case are that on 18.02.2007, the deceased Narsinglal with his friends engaged a Tata Sumo bearing No.AP26D 8718 to attend a function at Parkal, and at about 2.00 am on 19.01.2007 when they reached Iskon Temple of Mulug road, the driver of the Tata Sumo tried to over take a lorry, but all of a sudden, the Sumo hit the back side of the lorry bearing No.AP20V 5445. In the said accident, Narsinglal sustained head injury and died. The Police, Hasanparthy Police Station, registered a case in Cr.No.32/2007. The deceased was aged about 25 years and was a student by the date of accident.

6. Respondent No.1, owner of the offending vehicle remained ex parte. United India Insurance Company Limited, filed its counter resisting the claim of the claimants.

7. The Tribunal, on consideration of evidence, held that the accident occurred due to the rash and negligent driving of the driver of the Tata Sumo. The Tribunal granted Rs.3,26,400/- towards loss of dependency, Rs.5,000/- towards loss of love and affection, Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transport charges, in all granted Rs.3,36,900/- to the claimants holding that respondents 1 to 3 are jointly and severally liable to pay the same.

8. Learned counsel for the appellant submitted that the vehicle involved in the accident was covered with act policy. The act policy covers the risk of only third parties, but not inmates of the vehicle, and that since no extra premium was paid by the owner to cover the risk of passengers, the insurance company will not attain any liability to compensate the claimants. He further submitted that in the comprehensive policy, the risk of inmates can be covered, even as per the guidelines of Insurance Regulatory Development Authority. Since the deceased traveled in a Tata Sumo, there is no coverage of the risk, the insurance company is not liable to pay any compensation to the deceased.

9. Learned counsel for respondent Nos.1 and 2 submitted that in a case of death arising out of the same accident, this Court has rendered the judgment holding the liability against the insurance policy in MACMA.No.1040 of 2009, dated 11.11.2014. In MACMA.No.1040 of 2009, this Court held as follows:

> "8 b) In similar circumstances, in the cited decision in Imran Basha {2014 (1) ALD 547 (DB)}, a Division Bench of our High Court rejected the argument of Insurance Company regarding the non-existence of Insurance policy for want of unequivocal plea to that effect in its counter. In the instant case also, as already stated supra, the Insurance Company has not taken specific pleas in its counter to the effect that owner violated the terms of the policy by

hiring his vehicle and that the policy does not cover the risk of passengers in the vehicle. So, in the normal circumstances, going by the aforesaid Division Bench decision, the above arguments shall be rejected. However, it should be noted that despite lacking specific pleas to cover the above arguments, the Tribunal, it appears, allowed the first argument of the Insurance Company i.e. to the effect that vehicle was hired by the owner in contravention of terms of the policy and answered that argument against the Insurance Company. The Tribunal did not mention in its award about the second argument which is now raised for the first time in the appeal. So, in this appeal, I deem it apposite to discuss the correctness of the finding of the Tribunal with regard to first argument of Insurance Company alone.

c) RW1 in his further chief stated as if they took the vehicle on hire for Rs.600/- to go to Parkal to attend the marriage of their friend. Basing on this admission, it was argued by the Insurance Company that the owner committed breach of the policy. However, in the cross examination of counsel for claimant, RW1 stated that they travelled in the vehicle in a friendly manner and neither himself nor his friends have paid any amount to the driver of the vehicle. He further stated that vehicle does not belong to transport agent and they have not taken it from any travel agent. Thus, his evidence in cross examination was quite contrary to his chief. Hence, his evidence cannot be taken as a conclusive proof to hold that vehicle was taken on hire. Therefore, the Tribunal rightly rejected the contention of Insurance Company in that regard."

10. It is pertinent to note that this Court has already heard an appeal filed by the insurance company and their plea was negatived and liability was fixed against the insurance company. Taking into consideration the result in MACMA.No.1040 of 2009, dated 11.11.2014, in this appeal also, the liability is fixed against the insurance company.

11. The learned counsel for the appellant submitted that, though the deceased was a bachelor, the Tribunal has deducted 1/3rd towards personal expenditure instead of deducting 50%. It is laid down by the Hon'ble Supreme Court in Smt. Sarla Verma v. Delhi Transport Corporation[1] that out of the total income, 50% of the amount to be deducted towards personal expenditure of a bachelor. Therefore, it is considered that the Tribunal granted excessive compensation and the same requires to be reduced.

12. In view of the ratio in Smt. Sarla Verma's case (1 supra), personal expenses of a bachelor should be deducted at 50%, whereas the Tribunal has

[1] 2009 (6) SCC 121

deducted 1/3rd. Therefore, the personal expenses shall be deducted 50% for the purpose of calculation of compensation. After deducting 50%, the income of the deceased would be Rs.14,400/- per year (Rs.2,400/- X 50% X 12). The compensation for the death of the deceased comes to Rs.2,44,800/- (Rs.14,400/- X 17). Hence, the compensation awarded by the Tribunal towards death of the deceased is reduced from Rs.3,26,400/- to Rs.2,44,800/-. As far as the other heads are concerned, they shall remain the same.

13. Learned counsel for respondent Nos.1 and 2 submitted that the Tribunal has awarded very meager amounts towards loss of love and affection, loss of estate, funeral expenses and transport charges and requested for enhancement of the same. As a matter of fact, this is an appeal filed by the insurance company. In this appeal, the respondents are not entitled for enhancement. If respondent Nos.1 and 2 are advised, they may prefer an appeal for enhancement of compensation under those heads, which may appear to be on lower side.

14. In the result, the appeal is partly allowed. The compensation awarded by the Tribunal is reduced from Rs.3,36,900/- to Rs.2,55,300/- with interest @ 7.5% per annum. The appellants and respondent No.3 are directed to deposit the balance amount within two months from the date of receipt of a copy of this order. On such deposit, respondent Nos.1 and 2 are permitted to withdraw the entire amount.

15. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed as infructuous. No order as to costs.

GUDISEVA SHYAM PRASAD, J

Date: 03.03.2017.
TJMR