

THE HON'BLE SMT JUSTICE T.RAJANI

M.A.C.M.A.Nos.5254, 5255 and 5256 of 2008

COMMON JUDGMENT:

M.A.C.M.A.Nos.5254 and 5255 of 2008 arise out of the common judgment, dated 21.02.2008, passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram in M.V.O.P.Nos.12 and 13 of 2005. The grounds urged in the appeals are the same. They being that the lower Court failed to see that there is no negligence on the part of the driver of the vehicle; that the lower Court failed to see that the owner of the vehicle is also responsible for the accident; and that the owner of the vehicle was also charge sheeted for not maintaining the vehicle properly and hence, the insurance company is not liable. The Award was also questioned with regard to the quantum.

2. M.A.C.M.A.No.5256 of 2008 is preferred against the Judgment, dated of the I Additional District Judge, Vizianagaram in O.P.No.02 of 2005, dated 29.02.2008. This O.P. also arises out of the same accident. The grounds urged in this appeal are also similar to the grounds urged in the above two appeals. Hence, a Common Judgment can be passed in all the three appeals.

3. Heard both the counsel.

4. The facts, briefly, to the extent necessary, are on 31.05.2004, the injured or the deceased, as the case may be, was travelling in a jeep driven by the petitioner, in O.P.No.02 of 2005. The driver could not control the jeep as the jeep tyre got burst.

As a result the jeep turned turtle, causing injuries to some of the passengers and death of two passengers.

5. The contention of appellant's counsel is that it is a blatant case where the negligence is that of the owner. He is supposed to keep the vehicle roadworthy and he was also charge sheeted for his negligence. Hence, insurance company cannot be mulcted with any liability.

6. As a simple answer to the said contention, the counsel for the respondents rely on a Judgment of the Apex Court reported in **Smt. Kaushnuma Begum and others v. The New India Assurance Co.Ltd and Others**¹. The facts in the case, which came up for decision by the Apex Court in the above Ruling are almost the same. It was also a case where the accident was as a result of tyre bursting of the vehicle. The Apex Court invoked the Rule in **Rylands v. Fletcher** [**1861-1873 All England Reports 1. (para1)**] and fixed the liability on the insurance company. The issues that were taken up for consideration by the Apex Court were:

- (1) Whether there was no negligence or rashness on the part of driver of the jeep and;
- (2) that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle.

7. The Apex Court posed a question to itself, whether there should necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involving that vehicle) is to be sustained? It observed that in view of the

¹ 2001 (1) Supreme 5

provisions of the Motor Vehicles Act, under Chapter XII, the jurisdiction of the Tribunal is not restricted to decide claims arising out of the negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of the accidents arising out of the use of motor vehicles. There are other premises for such cause of action. The summary of Rule in **Rylands v. Fletcher** by Justice Blackburn was also extracted by the Apex Court, which is as follows:

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

It was held that like any other common law principle, which is acceptable to our jurisprudence, the Rule in **Rylands v. Fletcher** can be followed. Hence, the Supreme Court was inclined to adopt the Rule in claims for compensation made in respect of motor accidents. After having considered the Rule in **Rylands v. Fletcher**, the Supreme Court directed the insurance company to pay the amount to the claimants.

8. Hence, following the same principle and bound by the Judgment of the Supreme Court, it has to be concluded that the insurance company is also liable to pay compensation amount.

9. The counsel for the appellant does not press upon other grounds raised in M.A.C.M.A.Nos.5255 and 5256 of 2008, but, he, however, disputes the compensation awarded in O.P.No.12 of 2005, against which M.A.C.M.A.No.5254 of 2008 is preferred. He contends that the multiplier relevant for the age of the deceased is '15', but the Court below adopted '16' as a multiplier. The counsel for the respondents also does not dispute the said fact as the said multiplier is in accordance with the multipliers laid down in **Sarla Verma and others v. Delhi Transport Corp.& Anr²**.

10. There is no dispute with regard to the income that was taken for the deceased. The loss of future annual income, which was arrived at Rs.19,200/- was multiplied with '16'. It would suffice to multiply the same with '15' in order to meet the contention of the appellant's counsel. Then the Award amount comes to Rs.2,88,000/- instead of Rs.3,07,200/-.

11. In the result, M.A.C.M.A.Nos.5255 and 5256 of 2008 are dismissed and M.A.C.M.A.No.5254 of 2008 is partly allowed by substituting Rs.2,88,000/- in place of Rs.3,07,200/- and the rest of the Award in O.P.No.12 of 2005 remains un-interfered.

Miscellaneous petitions, if any, pending in these appeals shall stand closed. There shall be no order as to costs.

JUSTICE T.RAJANI

Date: .08.2017
YVL/LSK

² (2009) 6 SCC 121

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