HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A Nos. 836 and 892 of 2005

COMMON JUDGMENT:

MACMA No.836 of 2005 is filed by the claimants, and MACMA No.892 of 2005 is filed by the National Insurance Company Limited, Chilakaluripet, against the Order and Decree dated 10.11.2004 passed in M.V.O.P. No.1024 of 1999 by the Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'). As these appeals are connected, they are taken up together for disposal by way of this common judgment.

2. Brief facts of the case are that on 14.02.1999, at about 10.30 AM, the deceased Miriyala Sunil while traveling as a pillion rider on scooter bearing No.AP-7-6836 driven by one Anumolu Ravindranath, to go to Kotappakonda, a lorry bearing No.AEB 2518 driven by the 1st respondent-driver, in a rash and negligent manner, coming from Narasaraopet, dashed the scooter from behind, due to which the scooter fell down and dragged to about 20 yards and the crime lorry ran over the deceased and also the rider of the scooter. The accident was witnessed by one Paruchuri Kiran and others, who informed the same in Narasaraopet Rural P.S. A case in Crime No.25 of 1999 for the offence punishable under Section 304-A was registered against the 1st respondent-driver of the lorry. Alleging that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No. AEB 2518, the petitioners-claimants who are the parents of the deceased Miriyala Sunil, filed the claim petition under Sections 166 and 140 of the Motor Vehicles Act,

1988, claiming compensation of Rs.11,00,000/- against respondents 1, 2 and 3, the driver, the owner and the insurer of the crime lorry.

3. The Tribunal, on consideration of the evidence of PWs.1 and 2, RWs.1 and 2; and the documents Exs.A1 to A8, B1 to B9, has awarded a compensation of Rs.3,03,000/- with interest at 9% per annum, holding respondents 2 and 3, the owner and the insurer of the crime lorry, jointly and severally liable to pay the compensation.

4. Seeking enhancement of compensation awarded by the Tribunal, the claimants filed MACMA No.836 of 2005; whereas challenging the liability, the insurance company filed MACMA No.892 of 2005.

5. Heard learned counsel for the petitioners-claimants, and learned standing counsel appearing for the insurance company.

6. Learned counsel for the claimants argued that the deceased was a minor boy aged about 16 years, and he was studying intermediate and he had a bright future and therefore the Tribunal ought to have taken into consideration the notional income of the deceased as Rs.30,000/- per month as per the ratio laid down in Kishan Gopal v. Lala[1].

7. Learned counsel for the insurance company submits that the deceased was major as his age was shown as 18 years in the judgment of the Tribunal, in paragraph 18, and therefore, as the deceased was 18 years and was unmarried by the date of accident, 50% has to be deducted from the notional income. It is further contended that in Kishan Gopal (1 supra), the claim was made under Section 163A of the Motor Vehicles Act, 1988, whereas in the present case, the claim was

[1] (2014) 1 SCC 244

made under Section 166 of the Act, and therefore, the decision in Kishan Gopal (1 supra) is not applicable to the present case. It is further contended that if any compensation is liable to be paid in this case, the owner of the crime vehicle may be made liable, and pay and recovery may be ordered.

8. Learned counsel for the insurance company also contended that there is contributory negligence on the part of the rider of the scooter, and that the driver of the crime lorry was not holding valid driving licence. He further submits that as per Section 3 of the Motor Vehicles Act, 1988, no person shall drive a vehicle in a public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle. The learned counsel referred to Section 5 of the Act and submitted that no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle. Learned counsel also referred to Section 134 of the Act, clause (c) of which reads as under:

> *(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-*
>
> *(i) insurance policy number and period of its validity;*
>
> *(ii) date, time and place of accident;*
>
> *(iii) particulars of the persons injured or killed in the accident;*
>
> *(iv) name of the driver and the particulars of his driving licence;*
>
> *Explanation:-For the purposes of this section the expression "driver" includes the owner of the vehicle.*

9. Placing reliance on Sections, 3, 5 and 134 of the Motor Vehicles Act, the learned counsel for the insurance company contended that it is

the duty of the owner of the vehicle to furnish all the particulars of insurance policy and place of accident and the particulars of driver and driving licence to the insurer in writing. But in the instant case, the owner had remained ex parte before the Tribunal without furnishing these particulars and therefore adverse inference has to be drawn in this case and the liability of the insurer has to be exonerated as there is violation of terms and conditions of the insurance policy committed by the owner of the crime vehicle. In the alternative, it is also argued that in the event of the Court holding that there is liability for the insurer, pay and recovery may be ordered in this case.

10. Learned counsel for the insurance company relied on the judgment of this Court in MACMA No.350 of 2010, wherein it was held in paragraph 5 as under:

> *5. The only issue involved is whether there is a driving license to the driver. The material document is Ex.A5-Motor Vehicles Inspector Report, which clearly shows from column No.17 of the driving license has not produced at the time of inspection, though license is supposed to be with the vehicle. The charge sheet, no doubt, refers to the driver surrendered and after verification of the documents taken to custody, in fact, the insurer is sued notice under Ex.B3 to the owner to produce the license particulars sent by Ex.B4 registered letter even the same was there, the owner failed to produce and conveniently remained ex parte before the tribunal and the evidence of RW.1 is also to the effect that the driver has no valid driving license and despite notice owner failed to produce. Once such is the case, to draw the inference against the owner for non-production. Had it been available, he could have produced. For the non-availability that is substantiated by column No.17 of M.V.I.Report no driving license is produced, thereby suffice to say the tribunal should have considered in saying the insurer discharged its burden from the material available on record and*

there is nothing to rebut against the insurer. Thereby, the joint liability to be converted into pay and recovery.

11. Per contra, learned counsel for the claimants referred a decision reported in Mukund Dewangan v. Oriental Insurance Company Limited[2]. In Mukund Dewangan, the Apex Court, referred to paragraph 100 (iii), (iv), (v) and (vi) of National Insurance Co. Ltd., v. Swaran Singh[3], which read as under:

> *(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly driver or one who was not disqualified to drive at the relevant time.*
>
> *(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.*
>
> *(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.*
>
> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to*

[2] (2016) 4 SCC 298
[3] (2004) 3 SCC 297 : 2004 SCC (Cri) 733

avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act"

12. Placing reliance on the above decision in Mukund Dewangan (2 supra), the learned counsel for the claimants submitted that the burden of proof is on the insurer to prove that there is breach of conditions of insurance policy. It is further submitted that the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving licence are so fundamental as are found to have contributed to the cause of the accident.

13. It is further contended by the learned counsel for the claimants that if the breach of conditions have contributed to the accident or not is the fundamental aspect to be considered by the Tribunals basing on the facts of the case.

14. Learned counsel for the claimants submitted that in paragraph 14 of the impugned judgment of the Tribunal, it has been observed as under:

"14. RW2 is the official of RTO Office, Vijayawada. He stated that they have verified the driving licence of R1 Shaik Muktumsha, in their records. His licence number is 325/FD2/1982. The original licence was issued in their Hyderabad office. As per Xerox copy of licence of R1, as in Ex.B2 he got endorsement that he is having licence for heavy goods vehicle in RTA office, Vijayawada and the same was endorsed by the RTA authority, Vijayawada. They have no any records to that effect. The above endorsement is found on Ex.B2. It is not the endorsement of their office at Vijayawada. He cannot say now whether it is genuine or fake because they have no records. Witness again says that it is false one."

15. Learned counsel for the claimants also referred to a decision rendered by this Court in MACMA No.944 of 2010 wherein this Court awarded a total compensation of Rs.5,00,000/- in a case of death of a minor by taking into consideration his notional income as Rs.30,000/- per annum, and applying multiplier '15', and also awarded Rs.50,000/- towards conventional charges.

16. On perusal of the record, it is revealed from the Secondary School Certificate of the deceased that his date of birth was shown as 02.12.1981, and the accident occurred on 14.02.1999, and therefore the deceased was around 17 years 02 months 18 days by the date of accident, and therefore, the deceased was a minor by the date of accident and he would not come under the category of 'unmarried' as he was a minor, as marital status cannot be applied to a minor.

17. In the instant case, learned counsel for the insurance company argued that the driver of the crime lorry is not possessing valid driving licence, and when the accident occurred it is the duty of the owner of the crime lorry to produce all the particulars to the insurer as per Section 3, 5 and 134 of the Motor Vehicles Act, and in the absence of furnishing such particulars by the owner of the crime vehicle, an adverse inference has to be drawn.

18. It is pertinent to note that the burden is on the insurer to prove that there is breach of condition of terms and conditions of insurance policy. No doubt, this Court has taken a view in MACMA No.350 of 2010, basing on the facts and circumstances of that particular case, that adverse inference has to be drawn in case the owner of the crime vehicle does not

produce all the particulars in case of occurrence of an accident, however, in the light of the decision rendered in Mukund Dewangan (2 supra), the point to be decided in the instant case is whether there was breach of conditions of policy, and whether such breach was so fundamental that it contributed to the cause of accident. It can be understood in this way that if the breach is directly contributing to the cause of accident then only that breach of condition is to be taken into consideration as breach of condition of insurance policy.

19. A perusal of Ex.B2-copy of driving licence would show that the driving licence No.9164/… was renewed up to 26.7.2000 from 27.7.1997 by the Additional Licencing Authority on 12.08.1997. In the facts and circumstances of the case, I am of the view that there is no material on record to show that the driver is not possessing valid driving licence, and therefore, adverse inference cannot be drawn in this case, for the reason that there is a finding of the Tribunal that there is a driving licence which is marked as Ex.B2 but the concerned RTA, Vijayawada, did not have entries of renewal of this licence. Therefore, in the background of the facts of the case and in the light of the above decision, it can be safely concluded that the violation of terms and conditions of insurance policy are not proved. Therefore, the insurer is liable to pay compensation.

20. This is a case of death of a minor boy in a motor vehicle accident. The deceased was studying intermediate by the date of accident. He was the only son to his parents. He was a meritorious student as he secured distinction marks in SSC and in first year Intermediate course, and therefore he would have had a bright future. The Tribunal though

referred to all these aspects did not consider to award adequate compensation.

21. Therefore, considering the facts and circumstances of the present case, and by considering the ratio laid down in Kishan Gopal (1 supra), as the deceased was aged about 17 years 2 months by the date of accident, his notional income is taken as Rs.30,000/- per annum. Applying multiplier '15', the loss of dependency would come to Rs.30,000 x 15 = Rs.4,50,000/-. The claimants are als0 entitled to conventional charges of Rs.50,000/- as per the judgment of the Supreme Court in Ramilaben Chinubhai Parmar and Ors. V. National Insurance Co. and Ors.[4].

22. IN THE RESULT, the appeal filed by the claimants i.e., MACMA No.836 of 2005 is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.3,03,000/- to Rs.5,00,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The appeal filed by the insurance company i.e., MACMA No.892 of 2005 is dismissed. The insurance company is directed to deposit the compensation within two months from the date of receipt of this order. On such deposit, the claimants are permitted to withdraw the amount in equal share. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

14th July, 2017
KSM

[4] MANU/SC/0356/2014

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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