HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 945 of 2010
AND
CROSS OBJECTIONS(SR) No.1401 of 2011

COMMON JUDGMENT:

Since both the matters arise out of the same accident, they are being disposed of by way of common judgment.

2. M.A.C.M.A.No.945 of 2010 is filed by the appellant-The New India Insurance Company Limited aggrieved by the order dated 08.03.2010 passed in MVOP No.1414 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Visakhapatnam.

3. Cross-objections (SR) No. 1401 of 2010 is filed by the claimants aggrieved by the order dated 08.03.2010 passed in MVOP No.1414 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Visakhapatnam.

4. For sake of convenience, the parties are referred as they were arrayed before the Tribunal.

5. Heard the learned counsel for the claimants and the learned counsel for the respondents.

6. MVOP No.1414 of 2006 was filed by the claimants under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.12,00,000/- on account of death of deceased Kommoju Venkateshwar Rao, aged 45 years in a motor vehicle accident occurred on 28.04.2006. The Tribunal awarded compensation of Rs.2,70,000/-.

7. The appellant-Insurance Company aggrieved by the excessive quantum of compensation, has preferred the above appeal.

8. The claimants filed the above cross objections aggrieved by the findings of the Tribunal stating that the compensation awarded by it, is not adequate.

9. The brief facts of the case are that on 28.04.2006 at about 10.30 a.m. while the deceased Kommoju Venkateshwar Rao was going towards Maddilapalem junction, one trekker jeep bearing No.AP-31-U-6063 driven in a rash and negligent manner, dashed against him. He received injuries and died. He was 45 years old and was earning Rs.10,000/- per moth by the date of the accident. The appellants being dependants have claimed compensation of R.12 lakhs on account of his death against the 1st respondent, owner and the 2nd respondent-insurer of the crime vehicle.

10. The 1st respondent filed counter denying his liability and also quantum of compensation.

11. 2nd respondent also filed counter stating that the driver of the offending vehicle was not having valid driving licence. The driver had driving licence to drive light motor vehicle which is non transport vehicle. It is contended that at the time of the accident, he was driving light motor vehicle, a non transport vehicle, therefore, the insurance company is not liable to pay the compensation.

12. Inter alia, the claimants' contention is that, the Tribunal has not granted adequate compensation in the matter. The salary of the deceased was taken as Rs.3,000/- per month when the deceased worked as mechanic in A.P.S.R.T.C., Visakhapatnam Depot, was drawing Rs.8,790/-, and with deductions to a tune of Rs.4,838/-. The net salary drawn by him as on 3.07.87 was Rs.3,951/-. The Tribunal in spite of the salary certificate, has taken his salary as Rs.3,000/- per month.

13. It is contended by the learned counsel for the appellants that the Tribunal ought to have taken the salary of Rs.6,000/- per month, for the purpose of calculation.

14. In this regard, no arguments were advanced by the respondents in respect of the salary. In view of the fact that the deceased was an employee of A.P.S.R.T.C. working as mechanic and drawing salary of Rs.8,790/-, a minimum of Rs.6,000/- per month can be taken in spite of the deduction of Rs.4,838/- is there. Therefore, an amount of Rs.6,000/- is taken keeping in view the future prospects of the deceased if he was alive. The deceased was 51 years old by the date of the accident. The deceased was said to be 51 years old as per the post mortem examination report. Therefore, the salary of the deceased can be taken at Rs.6,000/- per month, as suggested by the learned counsel for the claimants.

15. The Tribunal has deducted 1/3rd of it towards personal and living expenses of the deceased. Keeping in view, the assistance of the family which is consisting of nearly four members, 1/4th can be taken instead of 1/3rd which would meet the ends of justice.

16. As per *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*, the multiplier applicable to the age of the deceased at 51 years is 9. The monthly income of the deceased is taken at Rs.6,000/-per month, the annual income of the deceased would be Rs.72,000/-, after deducting 1/4th of it, the contribution to the family comes to Rs.4,500/- x 12 =Rs.54,000/- per annum. The compensation payable to the claimants comes to Rs.4500/- x 12 x 9 = Rs4,86,000/-.

17. It is submitted that an amount of Rs.15,000/- was awarded towards consortium besides awarding a sum of Rs.15,000/- under non-pecuniary damages.

18. Learned counsel for the claimants, by placing reliance of para 39 of the decision of the Apex Court in Kishan Gopal v. Lala[1], submitted that the Tribunal awarded inadequate compensation and sought for enhancement of the same. Para 39 of the said decision reads as under:

> *"39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation {(2009) 6 SCC 121}, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas {(1994) 2 SCC 176, which is referred to in Lata Wadhwa case {(2001) 8 SCC 197} and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."*

19. In view of the decision of the Apex Court reported in Kishan Gopal v. Lala, under conventional heads towards loss of love and affection and funeral expenses, an amount of Rs.50,000/- is awarded to the claimants.

20. On consideration of the evidence, the compensation awarded by the Tribunal is enhanced to Rs.5,36,000/- with proportionate costs and interest at 7.5% per annum from the date of the petition till realization.

21. The learned counsel for the insurance company argued that the driver of the crime vehicle was not having valid, and effective driving licence. The driver was having a driving licence to drive only a light motor vehicle; whereas the driver has driven a transport vehicle.

[1] (2014) 1 SCC 244

22. The learned counsel for the claimants submitted that the driver of the crime vehicle is having licence to drive heavy goods vehicle and also LMV, but he was not having licence to drive the motor cycle with gear. It is contended that the finding of the Tribunal is incorrect in the light of the decision rendered in S.Iyyapan vs M/S United India Insurance[2].

23. It is contended that the finding of the Tribunal is incorrect in the light of the decision rendered in Iyyappan case wherein in paras 16, 17 and 18, it was held as under:

> 16. In the case of National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others, 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:
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> "20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."

[2] (2013) 7 SCC 62

> 17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

24. In IYYAPPAN case, the driver was holding licence to drive light motor vehicle. The vehicle in question was a Mahindra Maxi Cab in that case. The Apex Court held that merely because the driver did not get any endorsement in the driving licence to drive the Mahindra Maxi Cab

which is a LMV, the High Court cannot held that the insurer is not liable to pay compensation.

25. In the light of the case in Iyyappan, if the driver of the crime vehicle is possessing a valid driving licence to drive one type of vehicle, there need not be any endorsement for driving another type of vehicle. On that ground, the liability of the insurance company cannot be exonerated. In that case, the Tribunal ordered pay and recovery. The ratio in the case of Iyyappan is applicable to the facts of the present case.

26. The deceased is a third party to the insurance policy. The insurance policy is made for the crime vehicle by its owner, Therefore, the owner as well as the insurer are liable to pay the compensation in this matter. It is for the insurer to proceed against the insured for recovery of the amount.

27. Therefore, in the light of the decision rendered in the case of Iyyappan, the liability of the insurance company cannot be exonerated. The insurer can be ordered to pay and recover the same from the owner of the vehicle. Therefore, the finding of the tribunal in this regard is liable to be set aside. Keeping in view, the ratio laid down in the decision of Iyyappan case, the pay and recovery is ordered against the insurance company.

28. In the result, M.A.C.M.A.No.945 of 2010 filed by the insurance company is partly allowed. The finding of the Tribunal directing the Insurance Company to pay the compensation amount awarded jointly and severally is set aside and the Insurance Company is directed to pay the compensation amount to the claimants at the first instance and recover the same from the owner of the crime vehicle.

29. Cross-objections (SR) No.1401 of 2011 filed by the claimants is also partly allowed. The compensation awarded by the Tribunal at

Rs.2,70,000/- is enhanced to Rs.5,36,000/- lakhs (Rupees five lakhs thirty six thousand only) with interest at 7.5% per annum from the date of the petition till realization, with proportionate costs. The Insurance Company is directed to deposit the said compensation amount within two months from the date of the receipt of the copy of this order at the first instance and recover the same from the owner of the crime vehicle. On such deposit, the appellants are permitted to withdraw the said compensation amount.

As a sequel, miscellaneous petitions, if any, pending in both the appeals shall stand closed.

G. SHYAM PRASAD, J

Date:16.02.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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