

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.No.1298 of 2006

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

Heard Sri Srinivasa Rao Kutla for the petitioners, Sri Anil Kumar for Respondent No.2 and Sri C.Damoder Reddy, Caveator for Respondent No.1.

2. The present appeal came to be filed under Section 173 of Motor Vehicles Act, challenging the order in M.V.O.P.No. 782 of 2004 passed by the III Motor Accident Claims Tribunal, Warangal on 29.03.2006, granting compensation of Rs.37,97,000/- to the petitioners.

3. For the sake of convenience, the parties hereinafter are referred to as arrayed in the O.P.

4. The petitioners are residents of Parkal in Warangal district. Petitioner Nos.1 and 2 are the parents of the deceased and petitioner No.3 is the brother of the deceased. The 1st respondent is the owner of the crime vehicle, whereas the 2nd respondent is its insurer.

5. On 25.12.2012, the deceased, after writing final year MBBS examination, was coming to Warangal and he boarded an

Ambassador car, bearing No. UP 53 K 1515 with other co-doctors from Nepal Border to catch the Sagar Express at Gorakhpur Railway Station. When the vehicle was proceeding on the highway and when it reached Ek Sadva, the driver of the car drove the same in a rash and negligent manner and dashed against the stationed truck bearing No. UP 53 T 0655, resulting in the accident. Thereafter, the driver ran away and the inmates of the car shifted the injured to the hospital, where the injured was declared dead.

6. The grievance of the petitioners is that they admitted the deceased into MBBS course by paying an amount of Rs.24,00,000/- as Trust Fee and have also incurred an amount of Rs.2,00,000/- every year towards his education. It is their case that because of the sudden demise of the deceased, petitioners 1 to 3 were put to mental agony, which cannot be compensated by any means. Basing on these circumstances, and having regard to the nature of the accident, a case in Crime No. 321937 was registered against the car driver at Koldard Maharajganj. Since the accident was caused by the servant of the 1st respondent, the 1st respondent was said to be vicariously liable. Since the 1st respondent insured his vehicle with the 2nd respondent, M.V.O.P.No. 782 of 2004 came to be filed under Section 166 of the Motor Vehicles Act, making the 2nd respondent jointly and severally liable to pay the compensation to the petitioners.

7. The 2nd respondent filed counter, denying the claim of the petitioners, stating as follows:

That the petitioners have to prove the name of the driver at the time of accident and that they have to prove that the said driver had valid license on the date of accident and that the vehicle was fit for road. The petitioners have to prove that the vehicle was insured with this respondent and that the policy was in force by the date of accident and the cover note number 60/ 232 mentioned in the petition has to be proved and in fact the policy was not traced out in the office of the respondent. The petitioners have to prove the manner of the accident, the nature of injuries and ultimate death of the deceased. The averments of the petition that the petitioners incurred more than Rs.24,00,000/- for the academic education of the deceased and that his earning of Rs.10,000/- requires to be proved. Unless the income and future loss of earnings of the deceased are proved, the petitioners are not entitled for the same. The claim of Rs.50,000/- for transportation of corpse to Warangal is excessive. The claim of Rs.50,000/- under the head of compensation for expectation of life is untenable under Law and hence no amount can be granted under this head. The claims under various heads are also not acceptable and prayed to dismiss the same.

8. Basing on the pleadings in the petition and counter, the claims tribunal framed the following issues:

1. Whether the accident occurred on 25.12.2002 due to rash and negligent driving of vehicle bearing No. UP 53 K 1515 (Car) driven by its driver as per S.166 of M.V.Act?
2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?

3. To what relief?

9. In order to prove the claim of the claimants, the 1st claimant himself was examined as PW1 and also examined Dr. A.D.S Bhati and Sri Harigopal as PWs 2 and 3, and got marked Exs.A1 to A8. In support of its case, the 2nd respondent got examined Sri Sainath as R.W1 but no documents were marked. But a petition under Section 170 of the Motor Vehicles Act, vide I.A.No. 297 of 2005 was filed, which was allowed.

10. Considering the evidence on record, the claims tribunal awarded compensation of Rs.37,97,000/- in favour of the petitioners 1 and 2 and against the respondent with proportionate costs and with simple interest @7.5%per annum from the date of petition till date of realization. Challenging the same, the present appeal came to be filed by the insurance company.

11. Learned Standing Counsel for the insurance company would contend that the insurance policy being an Act policy, the Insurance Company is not liable to pay compensation to the inmates of the vehicle. In support of the same, he places reliance on two judgments of the Apex Court, viz., NATIONAL INSURANCE COMPANY LIMITED v. BALAKRISHNAN AND ANOTHER¹ and MANUARA KHATUN AND OTHERS v. RAJESH KUMAR SINGH AND OTHERS².

¹ (2013) 1 Supreme Court Cases 731

² 2017 ACJ 1031

12. It is not in dispute that the accident occurred while the deceased was traveling in an Ambassador car bearing No. UP 53 K 1515 with other co-doctors from Nepal Border to catch the Sagar Express at Gorakhpur Railway Station. As stated earlier, the only ground urged by the learned counsel appearing on behalf of the 2nd respondent-insurance company is that the insurance policy is an Act policy, and therefore, the Insurance Company is not liable to pay compensation to the petitioners.

13. In MANUARA KHATUN AND OTHERS v. RAJESH KUMAR SINGH AND OTHERS, one, Ismail Hussain, husband of Manuara Khatun and Nirod Prasad Mohanty, husband of Mamoni Saikia Mohanty, along with some other passengers were proceeding towards Guwahati from Nagoan, in a Tata Sumo vehicle bearing registration No. AR 09-3997. When they reached near Jorabat, there was a head-on collision between Tata Sumo and a truck bearing registration No. AS 01-H 2598, coming from the opposite direction. As a result of which, two persons died on the spot. M.A.C.M.As came to be filed claiming compensation. It was a case where the owner of the vehicle remained ex parte. The Claims Tribunal partly allowed the claim petitions and awarded compensation of Rs.24,89,500 and Rs.24,09,500 to both the claimants. Having regard to the facts and circumstances of the case, the Apex Court held that as the deceased therein were traveling as gratuitous passengers in a private vehicle, the insurance company was directed to make payment of the awarded

amount in both the claims and recover the amount from the insured in the execution proceedings of the case.

14. Having regard to the facts and circumstances of the case, and taking into consideration the findings of the Apex Court in MANUARA KHATUN's case, wherein, the Apex Court, after referring to [Manager, National Insurance Company Limited vs. Saju P. Paul & Anr.](#),³ case, while allowing the appeal filed by the insurance company, held that the insurance company cannot be held liable to suffer the liability arising out of the accident and the insurance policy. However, keeping in view the facts and circumstances of the case, the insurance company was directed to pay the awarded sum to the claimants and to recover the same from the owner of the offending vehicle. The relevant portion of the said judgment reads as follows:

“18. The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased was found traveling as gratuitous passengers in the offending vehicle and it was for this reason the insurance company was exonerated. In Saju P. Paul's case, also having held that the victim was gratuitous passenger, this court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the insured in the same proceedings.”

15. Since the facts in the instant case are identical not only to the facts in MANUARA KHATUN's case but also to the facts in Saju P. Paul's case, the present M.A.C.M.A is disposed of, confirming the

³ (2013) ACJ 554 (SC)

quantum of compensation awarded by the III Motor Accident Claims Tribunal, Warangal, vide order dated 29.03.2008 in M.V.O.P.No. 782 of 2004, and directing the 2nd respondent-United Insurance Company Limited to pay the awarded sum to the respondents 1 and 2 and recover the same from the insured, i.e., the owner of the offending vehicle in the same proceedings by filing execution application against the insured.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

07.12.2017
DMG

