

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

THURSDAY THE FOURTH DAY OF JANUARY
TWO THOUSAND AND EIGHTEEN

PRESENT
HONOURABLE MS. JUSTICE J. UMA DEVI

MACMA.No. 1442 OF 2008

Between:

National Insurance Company Limited
Represented by its Divisional Manager,
Kukatpally Divisional Office,
4-68/6, Ferozguda, Bowenpally,
Secunderabad – 500 011 ... appellant/Respondent No.2

V/s.

N. Agamaiah & Ors. ... Respondents/Petitioners

Counsel for the appellant : Sri Naresh Byrapaneni
Standing Counsel for National
Insurance Company Limited.

Counsel for the Respondents : Sri C. Vikram Chandra

The court made the following: [Judgment follows]

HONOURABLE MS. JUSTICE J. UMA DEVI**MACMA.No. 1442 OF 2008****JUDGMENT :**

Aggrieved by the award and decree dated 24/06/2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-I-Additional Chief Judge, City Civil Courts, Secunderabad, in MVOP.No. 152 of 2004, allowing the claim-petition filed by the respondents 1 to 3 herein under section 166 of the Motor Vehicles Act, in part by awarding compensation of Rs.3,00,000=00 with proportionate costs and future interest @ 7.5% per annum from the date of petition till deposit, as against the claim made by them for Rs.4,00,000=00 in respect of the death of one Mr. Nalla Anil Kumar in a motor vehicle accident that occurred on 05/5/2004 at about 05:00 p.m. near Toddy Compound Turning Military Dairy Farm, Old Bowenpally, Secunderabad, the present appeal is filed by the Divisional Manager of National Insurance Company Limited, Secunderabad, who has been arrayed as second respondent in M.V.OP.No. 152 of 2004.

2. The respondents herein are the petitioners in MVOP.No. 152 of 2004 and that the appellant is the second respondent in the aforementioned MVOP. For the sake of convenience, the parties will be arrayed as they are arrayed in MVOP.No. 152 of 2004.

3. The case of the petitioners as narrated in their claim-petition are briefly stated as under:

That on 05/05/2004 at about 05:00 p.m., while the deceased, Mr.Anil Kumar son of the petitioners 1 and 2 was proceeding on a Hero Honda bike bearing registration No. AP-10/F-616 from Tirumalagherry towards Bowenpally, which was being driven by its driver on extreme left side of the road by taking due care and caution when the said motor cycle reached toddy compound at Military Dairy Farm, Old Bowenpally, Secunderabad, suddenly a lorry bearing registration No. AP-28/U-5315 came in a rash and negligent manner and dashed the Hero Honda motor cycle in which the deceased was proceeding towards Bowenpally as a pillion rider. In the aforementioned accident the deceased, Mr.Anil Kumar sustained multiple

grievous injuries and was taken to Gandhi Hospital, Secunderabad, for treatment and there he succumbed to injuries on the same day at about 08:00 p.m. The police of Bowenpally Police Station registered a case in Crime No. 147/2004 for the offence under section 304-A and 337 of I.P.C. against the driver of the crime lorry bearing registration No. AP-28/U-5315.

4. The claim-petitioners further contended that the deceased was aged about 23 years, and was working as a private employee in Star White Electric Dry Cleaners, situate at Nagarjuna complex, Nizampet Road, Kukkatpally, Hyderabad, run by PW-3 and was getting a salary of Rs.2,500=00 per month. The petitioners having lost love and affection and the earnings of the deceased made the claim against the owner and insurer of the crime lorry for a sum of Rs.4,00,000=00.

5. The Tribunal on appreciation of the evidence of PW-1, the father of the deceased, whose version was corroborated by PW-2 held that the driver of the lorry bearing registration No.AP-28/U-5315 was responsible for the occurrence of the accident and accordingly held that

the first respondent is vicariously liable for the negligent of his driver.

Since the crime lorry was having subsisting insurance policy as on the date of the accident, the liability was fastened against the appellant-Insurance Company herein, as it agreed to indemnify the liability of owner of the crime lorry.

6. Being aggrieved by the award and decree dated 24/06/2006 passed in MVOP.No. 152 of 2004 by the Motor Accident Claims Tribunal-cum-I-Additional Chief Judge, City Civil Court, Secunderabad, granting compensation of Rs.3,00,000=00 to the claim-petitioners in respect of the death of the deceased, Mr.Anil Kumar, the National Insurance Company came up with the present appeal.

7. The contention of the appellant-Insurance Company is that the Tribunal had wrongly assessed the compensation at Rs.3,00,000=00 by adopting wrong multiplier '15'. The main contention of the Insurance Company is that the Claims Tribunal ought to have applied the multiplier '10', taking into consideration the age of the mother of the deceased. The other contention of the appellant-Insurance Company

was that the Tribunal had grossly erred in computing the compensation by considering the monthly income of the deceased, Mr. Anil Kumar, @ Rs.2,500=00 per month, for which no documentary proof was produced by the claim-petitioners. The appellant-Insurance Company had not disputed the manner of the accident. No plea as such was raised by the appellant-Insurance Company in the appeal grounds disputing or denying negligence on the part of the driver of the crime lorry bearing registration No. AP-28/U5315. Since the appellant-Insurance Company had not raised any contention disputing the finding recorded by the Claims Tribunal holding that the driver of the offending lorry was at fault, this Court is not inclined to go into the validity and correctness of the findings recorded by the Claims Tribunal on the aspect of negligence attributed to the driver of offending lorry. It is evident from the documentary evidence placed on record that the deceased was aged about 23 years by the date of his death. The Claims Tribunal taking into consideration the age of the deceased mentioned in Ex.A-3, certified copy of inquest report, Ex.A-4 certified copy of post-mortem report had

applied multiplier '15'. The claim-petitioners examined one Mr.B. Raju, as PW-3, in whose dry cleaner shop the deceased, Mr.Anil Kumar was working and was getting Rs.2,500=00 per month. The Claims Tribunal on appreciation of evidence given by PW-3, who deposed about the income particulars of the deceased, had rightly assessed the compensation at Rs.3,00,000=00. This Court has not noticed any patent irregularity in the award and decree passed by the Claims Tribunal in granting compensation of Rs.3,00,000=00 to the claim-petitioners in respect of the death of the deceased, Mr.Anil Kumar.

8. Hence, this Court is of the view that the award and decree dated 24/06/2006 passed in MVOP.No. 152 of 2004 by the Motor Accidents Claims Tribunal-cum-I-Additional Chief Judge, City Civil Court, Secunderabad, does not call for the indulgence of this Court, therefore, the same is hereby affirmed by dismissing the appeal filed by the appellant-Insurance Company.

9. In the result, this M.A.C.M.A. is dismissed without costs.

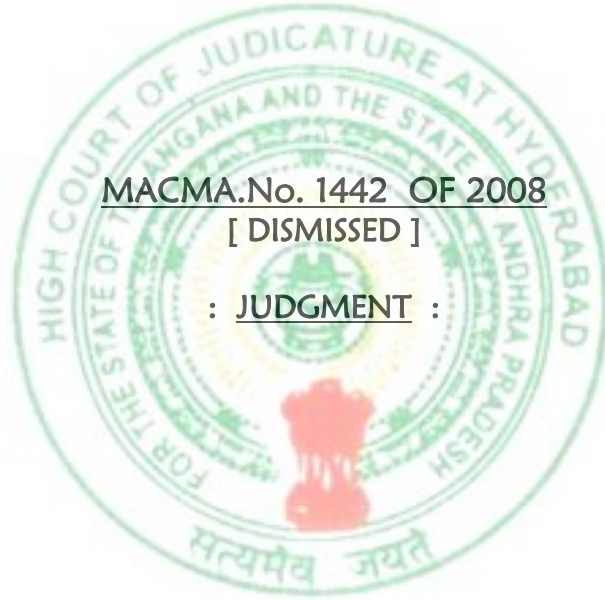
10. As a sequel, miscellaneous petitions if any, pending in this
M.A.C.M.A., shall stand closed.

JUSTICE J. UMA DEVI



04/01/2018
I s L

HONOURABLE MS. JUSTICE J. UMA DEVI



MACMA.No. 1442 OF 2008

[DISMISSED]

: JUDGMENT :

Date: 04/01/2018
Circulation No. 238
Court Master: I s L