THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.Nos.479 and 608 OF 2014

COMMON JUDGMENT:

Challenging the common award and decree dated 12.03.2010 passed in O.P.Nos.151 and 173 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle, the first respondent-owner of the offending vehicle, filed MACMA No.479 of 2014 insofar as it relates to O.P.No.151 of 2008 and MACMA No.608 of 2014 insofar as it relates to O.P.No.173 of 2008.

Since both the appeals are arising out of one accident and are filed against the common award, they are taken up together for hearing and disposed of by this common judgment.

Brief facts of the case are that on 21.08.2006 at about 8-30 a.m. while claimants-injured viz., N.Lakshmidevi and N.Ram-chandra Reddy (hereinafter referred to as 'claimant No.1' and 'claimant No.2' respectively for the sake of convenience) were travelling in the offending vehicle Tata Sumo to reach their village and when the vehicle reached Ramaraopalle bus stop, at that time the driver drove the said vehicle in a rash and negligent manner without following the road rules and dashed against one Somu, who was standing in the bus stop, and thereafter dashed against RTC bus coming in opposite direction, due to which, the inmates of the Tata Sumo i.e. claimant No.1 sustained injury to the right elbow and all injuries over the body and claimant No.2 sustained injuries all over the body and both of them were taken to CHC, Piler and from there to SVRRGG Hospital, Tirupati. In the said accident, the pedestrian Somu also died.

It was further stated that the claimants-injured incurred Rs.30,000/- and Rs.70,000/- respectively towards medical expenses, Rs.10,000/- and Rs.20,000/- respectively towards extra nourishment, Rs.10,000/- and Rs.20,000/- respectively towards transport and attendant charge. It was further stated that they were earning Rs.3,000/- per month by doing cultivation and milk business. Thus, in all, claimant No.1 sought compensation of Rs.1,00,000/- and claimant No.2 sought compensation of Rs.2,00,000/- against the respondents jointly and severally.

The first respondent-owner of the offending vehicle filed written statement denying the material averments of the claim petitions stating that K.Somasekhar, pedestrian, was crossing road without taking any care and caution and the driver of the offending vehicle in the process of avoiding accident, dashed to the RTC bus. It was further stated that the offending vehicle was insured with R.2 and the policy was in force. Hence, R.2 was liable to pay compensation. It was further contended that the claims were excessive.

Second respondent-Insurance Company filed written statement denying the material averments of the claim petitions and further stating that as per the terms and conditions of the Policy, R.1 was permitted to use the offending vehicle for his personal use only, but not on hire. As the claimants-injured travelled in the offending vehicle as fare paid passengers, R.1 violated the terms and conditions of the Policy and as such R.2 is not liable to pay compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident occurred due to rash and negligent driving of Tata Sumo bearing No.AP-03-Q-1682 involved resulting in injuries to the petitioners N.Lakshmidevi / N.Ramachandra Reddy?
2) Whether the petitioner is entitled for compensation? If so, by whom and to what amount?
3) To what relief?

To substantiate their claim, claimants themselves were examined as PWs 1 and 2, Dr.M.Sanjeevarayudu as P.W.3, Dr.Chalapathy Reddy as P.W.4 and Dr.R.Manikandhan as P.W.5 and got marked Exs.A.1 to A.16. On behalf of the respondents, the Administrative Officer of R.2 was examined as R.W.1, R.1 himself was examined as R.W.2 and Ex.B.1-Copy of Policy apart from Exs.X.1 and X.2 were got marked.

According to PWs 1 and 2, while they were travelling in the offending vehicle Tata Sumo belonging to the appellant, the vehicle was involved in an accident by hitting to the RTC bus. They further stated that due to rash and negligent driving of the offending vehicle by its driver, it gave a hit to a pedestrian viz., Somu (deceased in O.P.No.150 of 2008), later he lost control over the vehicle and dashed to the RTC bus. In cross examination nothing was elicited to falsify their evidence stated in chief examination. Based on the said evidence and coupled with Exs.A.1-FIR in crime No.127/2006 of K.V.Palli Police Station, Ex.A.2-charge sheet in crime No.225/2007 on the file of JFCM, Madanapalle, Ex.A.3-wound certificates of PWs 1 and 2, Ex.A.4-copy of MVI report, the Tribunal came to the conclusion that the accident was occurred due to the rash and negligent driving of the offending vehicle by its driver.

As regards quantum of compensation, the Tribunal after careful scrutiny of the oral evidence of PWs 3 to 5-Doctors who treated the claimants-injured for the injuries sustained by them in the accident, coupled with the documentary evidence under Exs.A.3, A.5 to A.16, granted Rs.25,000/- towards loss of earning capacity, Rs.2,000/- towards medical expenses, Rs.3,000/- towards transportation charges, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards pain and suffering, Rs.4,000/- towards loss of earnings, in all Rs.44,000/- towards compensation to the injured in O.P.No.151 of 2008 (MACMA No.479 of 2014).

In O.P.No.173/2008 (MACMA No.608 of 2014) the Tribunal granted Rs.10,000/- towards medical charges, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards pain and suffering, Rs.54,000/- towards permanent disability and Rs.6,000/- towards loss of earnings, in all Rs.80,000/-.

Further, the Tribunal by placing reliance on ***United India Insurance Co. Ltd., Shimla vs. Tilak Singh***[1], ***Pushpa Bai vs. Gulab Chand Vaishya***[2] and ***United India Insurance Co. Ltd. vs. Sukhni Mahto***[3] held that the R.1-owner of the offending vehicle alone was liable to pay and thereby exonerated R.2-Insurance Company from the liability. Aggrieved by the same, the present appeals came to be filed.

None of the parties disputed either the injuries sustained by the claimants or the quantum of compensation granted by the Tribunal.

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[1] AIR 2006 SC 1576
[2] 2008 ACJ 560
[3] AIR 2009 Jharkhand 127

Even as seen from the impugned award, the Tribunal has rightly granted compensation of Rs.44,000/- and Rs.80,000/- against the claim of Rs.1 lakh and Rs.2 lakhs respectively, with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization, which cannot be said to be on higher side, contrary to the evidence available on record and disproportionate to the injuries sustained by the claimants-injured.

The appellant-owner of the offending vehicle only disputes the liability fastened alone on him by the Tribunal.

The only question which arises for consideration of this Court in these appeals is 'whether the Tribunal has rightly absolved the Insurance Company from its liability while fixing the liability on the owner of the offending vehicle to pay the compensation?'

PWs 1 and 2 are the injured who received injuries while travelling in the offending vehicle by paying Rs.10/- each as fare. The offending vehicle is covered by Ex.B.1-Insurance Policy, which was subsisting as on the date of the accident. PWs 1 and 2 were allowed to travel in the offending vehicle as fare-paid passengers in the midway in violation of the terms and conditions of Ex.B.1 Policy, in other words, the vehicle was used for the purpose other than for which it was insured with the second respondent. As per Ex.B.1 Policy, the premium of Rs.50/- per head for 10 un-named passengers was paid and the liability of the Insurance Company was restricted to Rs.1 lakh in respect of each un-named passenger.

This Court having perused the evidence on record and Ex.B.1 Policy came to the conclusion that Ex.B.1 Policy covers the risk of 10 un-named passengers by collecting the premium of Rs.50/- per head and liability of the Insurance Company is restricted to Rs.1 lakh in respect of each un-named passenger. The plea of the R.1-owner of the offending vehicle that he used to distribute the seeds by touring the entire Chittoor District and in that process used to take the small farmers in his Tata Sumo for his business necessities and in that process the accident was occurred wherein PWs 1 and 2 received injuries, was not accepted by the Tribunal. At the time of the accident, the owner of the offending vehicle was not in the vehicle and he had no knowledge that the driver of the offending vehicle allowed injured-claimants by collecting Rs.10/- each to travel to their destination in the offending vehicle. The Tribunal based on the evidence of R.W.2, Ex.B.1 Policy and nature of the Policy, held that the offending vehicle was used for hire and thereby there was violation of terms and conditions of the policy. The Tribunal further held that since Ex.B.1 policy is a private car package policy. However, the Tribunal has grossly erred in fixing the liability of payment of compensation on the appellant/owner of the offending vehicle alone by absolving the insurance Company.

In the facts and circumstances stated above, it would be just and appropriate to apply the principle of 'pay and recover' as enunciated by this Court in ***National Insurance Company Ltd. Vs. Swaran Singh and others***[4]. Hence, the insurer is directed to pay compensation to the claimants and liberty is given to the insurer to recover the same from the insured. Further, the insurer

4 (2004) 3 SCC 297

is directed to pay the compensation within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, both the appeals are partly allowed to the extent indicated above.

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

(M.GANGA RAO, J)

06.12.2018
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