THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2633 of 2009

JUDGMENT:

1. The appellants-claimants, aggrieved by the award passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal (VII Additional District Judge), Ongole in M.V.Original Petition No. 13/2008 dated 26.03.2009, preferred this appeal, contending that the Tribunal ought to have granted the compensation against all the respondents. The Insurance Company is also liable to pay compensation. The Tribunal ought to have directed the insurance company to pay the award compensation to the appellants first, while giving the liberty to the insurance company to recover the same from the respondents 1 and 2. The further contention is that it should have applied multiplier of 18 instead of 17, since the age of the deceased as per the charge sheet and also inquest report is 30 years.

2. The appellants, in MACMA No.2633 of 2009 are the claimants in M.V.Original Petition No.13 of 2008, filed the claim petition before Motor Accidents Claims Tribunal (VII Additional District Judge), Ongole under Section 163-A of Motor Vehicles Act 1988, claiming compensation of Rs.4,00,000/- against the respondents. The 1st appellant/claimant is wife, appellants 2 &3/claimants 2 & 3 are the minor children and appellants 4 & 5/claimants 4&5 are the parents of the deceased Beerakayala

Markandeyulu, aged about 30 years and was working as mason by earning Rs.5,000/- per month.

3. The case of the appellants/claimants in brief is as follows: The deceased, while returning from Singarayakonda, boarded the bus and got down at Badevaripalem Bus-Stop and while crossing the road a trolley auto bearing No. AP 26 TR 7010 proceeding from Pokur, which was driven in a rash and negligent manner, without blowing horn, dashed the deceased and thereby he fell down and sustained injuries and while he was being shifted to the hospital succumbed to injuries. R.1 is the driver, R2 is the owner and R3 is the insurer of the trolley auto. So, they are liable to pay the compensation to the appellants/claimants.

4. The 2nd and 3rd respondents filed counter affidavit contending that there was no rash and negligent on the part of the driver of Auto Trolley. At the time of accident the driver of the Auto Trolley drove in a normal speed.

5. The 3rd respondent filed a separate written statement contending that the driver of the auto trolley has no valid and effective driving license to drive the auto at the time of accident; there by the 3rd respondent is not liable to pay any compensation to the petitioners.

6. The respondents further contended that the Tribunal well considered both oral and documentary evidence and came to the right conclusion and awarded just compensation and the

award do not suffer from any legal infirmities warranting interference.

7. The Tribunal after hearing both the parties and considering the rival contentions, framed following issues for trial:

(1) Whether the accident occurred due to the rash and negligent driving of the trolley auto bearing No. AP26 TR 7010 by its driver ?
(2) Whether the petitioners are entitled to the compensation? If so, to what amount and from whom?
(3) To what relief?

9. In order to prove the respective claims, on behalf of the appellants/claimants P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were got marked. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B.1 to B.4 were got marked.

10. On a consideration of the evidence on record, the Tribunal recorded a finding that the accident occurred due to the rash and negligent driving of auto trolley bearing No.AP 26 TR 7010 by its driver. In the process of assessing the compensation, the Tribunal awarded total amount of Rs.3,64,000/- with interest at 9% per annum from the date of petition till the date of deposit of compensation into the Court and directed respondents 1 and 2 to deposit the same within thirty days from the date of award while absolving the third respondent-Insurance Company from liability.

11 Now the point that arises for determination in the appeal is, *whether the Tribunal awarded suitable compensation by applying relevant multiplier* ?

12. . From the evidence of P.W.1, it is clear that she is the wife and appellants/claimants 2 and 3 are the children and appellants/claimants 4 and 5 are the parents of the deceased. There is no dispute with regard to rash and negligent driving of auto trolley bearing No. AP 26 TR 7010 by its driver. Hence there is no need to go into that aspect in the present appeal. The main contention of the appellants-claimants is that the amount awarded is very meager and all the appellants/claimants are dependants on the income of the deceased and that none of them is earning member. The 1st appellant/1st claimant B.Malleswaramma, who is the wife of the deceased was examined as P.W.1; Talluri Tirupathi who is the eye-witness to the accident was examined as P.W.2. The Tribunal considered that the evidence of P.W.1 and 2 and supporting documentary evidence at Ex.A1-copy of F.I.R., Ex.A2-inquest report, Ex.A3 copy of postmortem certificate, Ex.A4 copy of MVI report and Ex.A5 copy of charge sheet.

13. P.W.1 clearly deposed that at the time of accident dhe was at a distance of 10 feet from the place of accident as elicited by the R.3 counsel during the cross-examination. P.W.2 deposed that at the time of accident he along with others chit chatting near bus stop at Badevaripalem village.

The evidence of P.Ws 1 and 2 corroborated that on 11.12.2007 at about 6.45 P.M. the deceased Markendeyulu got down the bus near Badevaripalem bus stop and while crossing the road, a trolley auto bearing No.AP-26-TR-7010 being driven in rash and negligent manner with high speed hit the deceased, due to which, deceased fell down on the road and sustained multiple injuries all over the body. While shifting to the hospital, the he succumbed to injuries.

14. A reading of Exs.A.1-FIR goes to suggest that the driver of auto trolley bearing No. AP 26 TR 7010 drove the same with high speed and in rash and negligent manner. The Investigating Officer after thorough investigation filed Ex.A.5-Charge Sheet against the driver of the said auto trolley finding that he drove the auto trolley in rash and negligent manner with high speed and hit the deceased at Badevaripalem bus stand while he (deceased) was crossing the road. The Motor Vehicle Inspector under Ex.A.4 inspected the auto trolley bearing No. AP 26 TR 7010, examined the same and opined that the accident was not due to any mechanical defect of the vehicle. The Inquestdars under Ex.A.2 states that the deceased while crossing the road, the auto trolley bearing No. AP 26 TR 7010 being driven in rash and negligent manner, with high speed, dashed against him and thereby he fell down and sustained injuries. They further stated that while the deceased was undergoing treatment, succumbed to injuries. The doctor who conducted Post Mortem examination over

the dead body of the deceased deposed under Ex.A.3 that the death of the deceased was due to shock on account of fracture of skull and brain injury.

15. The respondents having taken plea that the accident was not due to negligence on the part of driver of the auto trolley, but due to negligence on the part of the deceased himself, did not examine any independent eye witness. The owner of auto trolley bearing No. AP 26 TR 7010 was examined as RW.1, and the Relationship Execute of third respondent-Insurance Company was examined as RW.2. Both RWs.1 and 2 are not the eye witnesses to the accident. Therefore their evidence that there is no negligence on the part of the driver of auto trolley bearing No.AP 26 TR 7010 is inadmissible because they are not the eye witnesses to the accident. Any amount of evidence was only a hearsay evidence. More so, R.W.1 admitted that he went to the hospital and saw the dead body of the deceased at 8.00 PM whereas the accident occurred at 6.45 PM which shows that he was not the eye witnesses to the accident.

16. In the absence of rebuttal evidence and having regard to the facts and circumstances of the case, I am of the view that the evidence of P.W.2 supported by Ex.A.1-FIR, Exs.A.2-Inquest report, EX.A.5-charge sheet and Ex.A.4-MVI report establish that the accident occurred due to rash and negligent driving of auto trolley bearing No.AP 26 TR 7010 by its driver. Further the opinion of inquestdrars under Exs.A.2 and EX.A.3 post

mortem report would establish its direct nexus to the accident. Therefore the finding of the Tribunal that the accident occurred due to rash and negligent driving of driver of auto trolley bearing No.AP 26TR 7010 is legal, valid and do not warrant interference.

17. The contention of the third respondent is that the driver of auto trolley did not possess valid and effective driving licence at the relevant point of time and that the owner-R.W.1 of the auto trolley having knowledge of the same entrusted the vehicle to him and thereby violated the terms and conditions of the policy. The evidence of RW.1 is that the driver possessed valid and effective driving licence at the time of accident and the third respondent-Insurance Company has to indemnify the liability. Against the said evidence, there is evidence of R.W.2-Relationship Executive of the third respondent-Insurance Company, who deposed that the Insurance Company issued Ex. B.1/B.4 policy to the auto trolley bearing No. AP 26 TR 7010 and the said policy was in force as on the date of accident. The said fact is not in dispute. The evidence of R.W.2 is that the first respondent was not holding valid and effective driving licence to drive the auto trolley at the material time of accident and the entrustment of the auto trolley to the first respondent by the second respondent amounts to violation of terms and conditions of the policy. To substantiate the same, he filed Ex.B.2 driving licence to drive the auto trolley bearing No.AP 26 TR 7010 which was subsequently registered as AP 27X 0613. As per Ex.B.2 driving licence, the driver-first respondent has got driving licence

to drive motor cycle with gears and Tractor & trolley. Ex.B.3 shows that the offending auto trolley was registered as goods carriage light motor vehicle. Admittedly there is no endorsement on Ex.B.2 showing that the driver was licenced to drive transport motor vehicle. He only possess licence to drive transport motor cycle with gears, tractor & trolley which was valid up to 30.04.2027.There is a well suggestion to R.W.1 that the driver had no driving licence and that the second respondent entrusted the auto trolley knowing that R.W.1-had no driving licence . The said suggestion was denied. R.W.1 admitted that the police filed charge sheet against him and driver on the ground that he had entrusted the vehicle to a person who has no valid driving licence. The admission of R.W.1 read with Ex.A.5 goes to suggest that the accused/K.Pitchaiah/Driver, who is first respondent herein was charge sheeted for the offence punishable under Section 180 of the MV Act for not having valid driving licence and another accused, second respondent herein was charge sheeted for the offence punishable under Section 81 of MV Act for allowing the driver to drove the auto who was not having valid driving licence.

18. In the case of S. IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER {(2013) 7 SCC 62} admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place was Mahindra Maxi Cab. The Apex Court held that merely because the driver did not get any endorsement in the driving licence to drive Mahindra

Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. It was further held that 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 a commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence, and, 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.

19. The facts of the case on hand are similar to the above case. In the instant case, the driver who is first respondent herein was holding driving licence to drive light motor vehicle--non transport motor car with gears and Tractor & trolley. As per Ex.B.3, the auto trolley bearing No.AP 27X 0613 was registered as goods carriage-Light Motor Vehicle. The gross weight of the said vehicle is 1550 Kgs. As stated supra, the driver/first respondent herein was charge sheeted for the offence punishable under Section 180 of the MV Act for not having valid driving licence and another accused, second respondent herein was charge sheeted for the offence punishable under Section 181 of MV Act for allowing the driver to drove the auto who was not having valid driving licence. A well suggestion was put to RW.1

that having knowledge that the first respondent did not possess valid and effective driving licence, he had entrusted the vehicle thereby violated the terms and conditions of policy Ex.B.1/B.4. Having regard to the facts and circumstances of the case and as observed in the above decision, it is for the Insurance Company to pay and recover the compensation.

20. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. The provision under Section 94 of MV Act has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have

the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. 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. To use the vehicle without the requisite third party insurance being in force is a penal offence (Section 94 of the Motor Vehicles Act). The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance Co. to satisfy the judgment obtained against the persons insured against third party risk. In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. In such view of the legal position, I am of the considered view that it is just and proper to order the third respondent-Insurance Company to pay and recover.

21. Further the contention of the appellants/claimants is that the multiplier applied by the Tribunal is incorrect and according to them, the correct multiplier is 18.

With regard to the application of appropriate multiplier, the evidence of P.W.1 is that her husband was aged 30 years as on the date of accident and he was a mason earning Rs.5000/- per month. The evidence of P.W.2 is silent about the occupation and income of the deceased. Except oral evidence of P.W.1, there is no documentary evidence to establish age, occupation and income of the deceased. In Ex.A.1, the age of the deceased was mentioned as 30 years as also in Exs.A.2-inquest report, A.3-PME report and A.5-charge sheet. In the absence of any rebuttal evidence, the Tribunal based on the evidence of P.W.1 and above documentary evidence came to the conclusion that the deceased was aged 30 years as on the date of accident.

22. With regard to the income of the deceased, P.W.1 deposed that her husband was working as mason and earning Rs.5000/- per month. There is no documentary evidence in regard thereto. However, the Tribunal took the daily income of the deceased at Rs.100/- per day and if he worked for 25 days in a

month, he can easily earn Rs.2500/- per month. But, as per the recent decisions, the income of a labour must not be less than Rs.3000/- per month. Accordingly I consider the income of the deceased at Rs.3000/- per month. As per the decision of the Apex Court in SARLA VERMA's case, the appropriate multiplier applicable for the age of deceased 30 years is '17'. Since the claimants are five in number, 1/4th has to be deducted towards the personal expenses of the deceased. Accordingly if ¼ is deducted, the monthly dependence would be Rs.2250/- Then the normal compensation on account of loss of dependency works out to be Rs.2250/- x 12 x 17 = Rs.4,59,000/-.

23. Added to the same, in terms of the recent decision of the Apex Court in NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI and Ors. (20-17 ACJ 2700), the appellants/claimants are entitled to Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In all the appellants/claimants are entitled to receive Rs.5,29,000/-.

24. In NINGAMMA AND Ors Vs.UNITED INDIA INSURANCE Co. Ltd (AIR2009SC3056) it was held that under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. In the case on hand, the deceased was working as mason. Due to

sudden and untimely death of the deceased-Markandayulu, the appellants/claimants who are wife, two children and aged parents suffered loss of their dependency. They deprived of the income. If suddenly one of the spouses departs from the journey of life, midway, on account of unnatural and untimely death, a large vacuum is created in the life of the surviving spouse, which is difficult to fill. Loss of one of the spouse suddenly would leave the other spouse in dark, leaving the entire burden of carrying on the family mantle further, all alone. Worst is the case, when there are minor children and aged parents to be taken care of. Because of the unnatural death of one of the spouses, the surviving spouse would be deprived of all the joys and happiness of life and companionship. Having regard to the same, the appellants/claimants are entitled to receive the more compensation than they claimed in the claim petition, as is awarded herein.

25. For the foregoing discussion and in the result, the appeal is allowed with proportionate costs and setting aside the Award and decree dated 26.03.2009 passed in MVOP.No.13 of 2008 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal cum VII Additional District Judge, Ongole and awarding total compensation of Rs.5,29,000/- with interest at 9% per annum from the date of petition i.e. 31.12.2007 till the date of deposit against second respondent herein who is vicariously liable to the acts of the driver, first respondent herein

26. As discussed supra, the third respondent-Insurance Company shall deposit the total compensation as is awarded herein, after deducting the amount if any already paid/deposited, within thirty days from the date of receipt of a copy of this judgment and later it is at liberty to recover the same from the second respondent.

27. Out of the total compensation of Rs.5,29,000/-, a sum of Rs.2,29,000/- is apportioned to the first appellant, Rs.1,00,000/- each is apportioned to the second and third appellants and Rs.50,000/- each is apportioned to the appellants 4 and 5..

28. On deposit of the compensation, the first appellant, fourth and fifth appellants are permitted to withdraw their share amount.

29. The compensation amount awarded to minor children, i.e. appellants 2 and 3 shall be kept in fixed deposits of any nationalized banks till they attain majority. On attaining majority appellants 2 and 3 can make an application seeking to withdraw their share amounts according to their need and necessity.

30. Advocate fee is fixed at Rs.2,500/-

31. The appellants/claimants have to pay deficit court fee due before applying for the decree and award.

32. The appeal against Respondent No.1 is dismissed. The liability of the third respondent is absolved.

30. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated 23rd January, 2018.
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