

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

M.A.C.M.A. Nos. 1004 and 1590 of 2010

MACMA No. 1004 of 2010

Between:

Rathlavath Venkatiya and 2 others

... Appellants

AND

1. K. Venkataiah and another

.... Respondents

M.A.C.M.A. No. 1590 of 2010

Between:

Bajaj Allianz General Insurance co. Ltd.

... Appellant

AND

Rathlavath Venkatiya and 3 others

... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. Nos. 1004 and 1590 of 2010**

% 29.01.2018

MACMA No. 1004 of 2010

Rathlavath Venkatiya and 2 others

... Appellants

Versus

\$ 1. K. Venkataiah and another

.... Respondents

M.A.C.M.A. No. 1590 of 2010

Bajaj Allianz General Insurance co. Ltd.

... Appellant

versus

\$ Rathlavath Venkatiya and 3 others

... Respondents

< GIST:

> HEAD NOTE:

! Counsel for the Appellants (Claimants): Sri A. Madhava Reddy

^ Counsel for the Respondents : Sri A. Ramakrishna Reddy

? Cases referred

¹ (2013) 7 SCC 62

² (2016) 4 SCC 298

³ (2004) 3 SCC 297 : 2004 SCC (Cri) 733

⁴ (2015) 4 SCC 237

⁵ MANU/SC/0507/2010

⁶ (2009) 6 SCC 121

⁷ 2017 SCC OnLine SC 1270

⁸ 2003 (2) SCC 274

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. Nos. 1004 and 1590 of 2010

COMMON JUDGMENT:

These two appeals are arising out of the Order and Decree dated 25.01.2010 passed in O.P.No.1552 of 2010 by the XI Additional Chief Judge, City Civil Court (FTC), at Hyderabad (for short, 'the Tribunal'). MACMA No.1004 of 2010 is filed by the claimants; and MACMA No.1590 of 2010 is filed by the Bajaj Allianz General Insurance Co. Ltd (for short, 'the insurance company'). As these are cross appeals, they are taken up for disposal by way of this common judgment.

2. The claimants are the legal representatives of the deceased-Rathlavath Laxmi. They filed the claim petition O.P.No.1552 of 2010 under Section 163A of the Motor Vehicles Act, 1988, before the Tribunal claiming compensation of Rs.4,00,000/- against respondents 1 and 2, the owner and insurer of the Auto bearing No.AP-22AF-TR-1100, on account of the death of the deceased in a motor vehicle accident that occurred on 19.05.2007. It is the case of the claimants that on 19.05.2007, the deceased Rathlavath laxmi was proceeding in the auto from her village to Veldanda Police Station, and when the auto reached Veldanda P.S., the deceased was trying to get down from the auto and, at the same time, the driver of the auto, without even noticing that the deceased was getting down from the auto, has suddenly accelerated and moved the auto in a rash and negligent manner due to which the deceased fell down from the moving auto and sustained grievous injuries to her head. The deceased was immediately taken to Government Hospital, Kalvakurthy, and the doctors there referred her to S.V.S. Hospital, Mahabubnagar. While undergoing treatment at S.V.S. Hospital,

Mahabubnagar, the deceased succumbed to injuries on 19.05.2017 at about 1:20 PM. Alleging that the accident occurred due to the rash and negligent driving by the driver of the auto, the claimants filed claim petition O.P.No.1552 of 2010 claiming compensation of Rs.4,00,000/- against respondents 1 and 2, the owner and insurer of the offending Auto. The Tribunal, on consideration of the evidence, has awarded compensation of Rs.2,02,500/- with interest at 7.5% per annum from the date of petition till realisation, under various Heads. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants filed MACMA No.1004 of 2010; and challenging the liability, the insurance company filed MACMA No.1590 of 2010.

3. Heard the arguments of learned counsel Sri A. Ramakrishna Reddy, for the insurance company; and the learned counsel Sri A. Madhava Reddy, for the claimants.

4. Sri A. Ramakrishna, learned counsel for the insurance company, submitted that there is contributory negligence on the part of the deceased as the deceased jumped out of the moving auto upon seeing her husband at Veldanda Police Station. Learned counsel placed reliance on the evidence of RW2-driver of auto and contended that that the accident did not occur because of the negligence of RW2. It is also contended that the driver of the crime auto had licence to drive a non-transport vehicle, but he had driven a transport vehicle and, therefore, the insurance company is not liable to pay the compensation as there is violation of terms and conditions of insurance policy.

5. Per contra, Sri A. Madhava Reddy, learned counsel for the claimants, submitted that the evidence of PW1 and the documents Exs.A1 to A4, would clinchingly prove that the accident has occurred due to the rash and negligent driving by the driver of the auto.

Ex.A1 is the complaint lodged by the husband of the deceased in Veldanda P.S., on 19.05.2007. He stated in his complaint that on 18.05.2007 night, he had a quarrel with his third son and on that issue he went to Veldandi Police Station on 19.05.2007, and the deceased came for him to the police station in a separate auto i.e., Auto No.AP-22AF-TR-1100, and while she was getting down at the police station, the driver of the auto suddenly accelerated the auto in a rash and negligent manner without even noticing that the deceased was getting down from the auto; thereby the deceased fell down from the moving auto and sustained grievous injuries, and she was taken to Government hospital, Kalwakurthy, and from there to SVS Hospital, Mahabubnagar, for treatment, and she succumbed to the injuries on the same day at 1:20 PM while undergoing treatment in SVS Hospital. Ex.A2 is the inquest report which shows that the cause of death was injuries received in the accident. Ex.A3 is the Post-mortem Examination Report, which also reveals that she died out of the injuries received in the accident. Ex.A4 reveals that the police registered a case in Crime No.49 of 2007 for the offence under Section 304-A IPC against the driver of the auto for rash and negligent act.

6. The main contention of the learned counsel for the insurance company is that the accident occurred due to the negligence of the deceased herself as she jumped out of the moving auto on noticing her husband at the Police Station thereby she fell down and received injuries. PW1 is the husband of the deceased and he is an eyewitness to the accident. He lodged Ex.A1-FIR and basing on that the police filed Ex.A4-charge sheet, registering a case against the driver of the crime auto. The other part of the evidence is that of the insurance company, on whose behalf RW2-the driver of the auto was examined. No doubt, both the witnesses have stated against each other with regard to negligence. This is like oath against oath. The

case of the claimants appears to be more probable that no person jumps out of a moving auto instead of getting down at the alighting place. Moreover, there is no evidence on record to show that the deceased jumped out of the moving auto on seeing her husband at Veldanda Police Station.

7. It is the case of the claimants that while the deceased was trying to get down from the auto, the auto moved fast and she fell down and received injuries. It is obvious from the complaint Ex.A1 and the charge sheet Ex.A4 that the accident occurred due to the rash and negligent driving by the driver of the auto who had driven it very fast without even noticing that the deceased was trying to get down from the auto. Though it is argued by the insurance company that there were disputes between the deceased and her husband, and her husband was at the police station, and that the deceased was coming in an auto and on seeing her husband at the police station, she suddenly jumped from the auto while it was in motion, however, as a matter of fact, there is no material on record to show the said defence raised by the insurance company. Therefore, there is no force in the contention of the learned counsel for the insurance company that there is contributory negligence on the part of the deceased.

8. The other contention raised by the learned counsel for the insurance company is that the driver of the auto was having licence to drive a non-transport vehicle but he had driven a passenger auto and, therefore, the insurance company is not liable to pay compensation and hence the liability of the insurance company is liable to be exonerated.

9. Learned counsel for the claimants placed reliance on **Iyyapan v. United India Insurance Co. Ltd.**¹, submitted that the liability of

¹ (2013) 7 SCC 62

insurance company cannot be exonerated on the ground of the driver possessing licence to drive a non-transport vehicle but is found to have driven a transport vehicle. Placing reliance on and **Mukund Dewangan v. Oriental Insurance Company Limited**², the learned counsel for the claimants submitted that the insurance company cannot avoid its liability to pay compensation to third party on the ground of breach of conditions of policy by the insured. In **Iyyapan (1 supra)**, it was observed in paragraphs 18 and 19 as under:

“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.

19. In the instant case, 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. 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. The impugned judgment is, therefore, liable to be set aside.

² (2016) 4 SCC 298

10. In **Mukund Dewangan**, the Apex Court, referred to paragraph 100 (iii), (iv), (v) and (vi) of **National Insurance Co. Ltd., v. Swaran Singh**³, which read as under:

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act"

11. Learned counsel for the claimants submitted that the deceased was working as agricultural labourer and was earning Rs.3,000/- per month, but the Tribunal has taken the income of the deceased as Rs.1,500/- per month and, therefore, sought for enhancement of compensation.

³ (2004) 3 SCC 297 : 2004 SCC (Cri) 733

12. The deceased was working as an agricultural labourer. In view of the ratio laid down by the Apex Court in **Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar**⁴, and also in **Arun Kumar Agarwal v. National Insurance Company**⁵, the income of the deceased can be taken into consideration as Rs.3,000/- per month for the purpose of calculation of compensation. Therefore, taking the income of the deceased as Rs.3,000/- per month and deducting 1/3rd towards her personal expenses, the monthly contribution of the deceased towards her family would be Rs.2,000/-. The deceased was 40 years old by the date of accident and, therefore, the multiplier applicable to her age as per **Sarla Verma v. Delhi Transport Corporation**⁶, would be '15'. Therefore, the compensation towards loss of dependency comes to $\text{Rs.2,000} \times 12 \times 15 = \text{Rs.3,60,000/-}$. In view of the judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**⁷, the claimants are entitled to an amount of Rs.70,000/- towards loss of consortium, loss of estate and funeral expenses. Therefore, the claimants are entitled to a total compensation of Rs.4,30,000/- with interest at 7.5% per annum from the date of petition till realisation, against respondents 1 and 2. By following the principle laid down in **Nagappa Vs. Gurudayal Singh**⁸, wherein the Hon'ble Supreme Court opined that since the provisions of the Motor Vehicles Act have no restriction on the quantum of compensation that can be awarded in appropriate cases where, from the evidence brought on record, the Courts feel that the claimant is entitled to more compensation than claimed, the Courts may award such compensation, the only embargo being that the compensation should be 'just', and not arbitrary, fanciful or unjustifiable from the evidence brought on record. Therefore,

⁴ (2015) 4 SCC 237

⁵ MANU/SC/0507/2010

⁶ (2009) 6 SCC 121

⁷ 2017 SCC OnLine SC 1270

⁸ 2003 (2) SCC 274

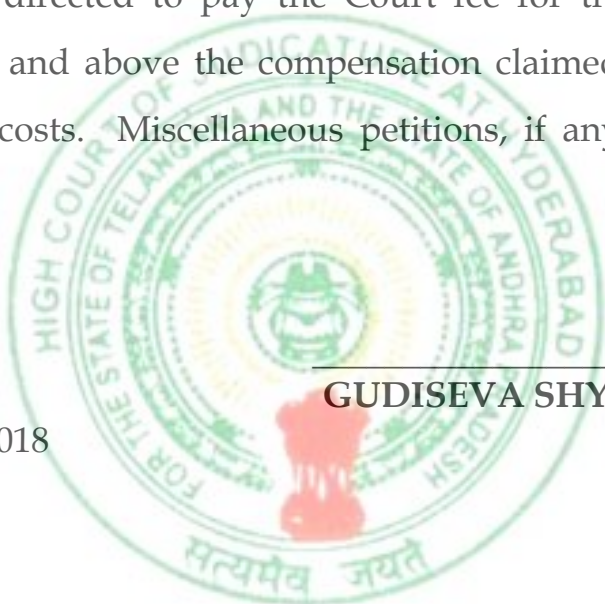
keeping in view the ratio laid down in **Nagappa**, the compensation of Rs.4,30,000/- is awarded to the claimants.

13. **IN THE RESULT**, the appeal filed by the insurance company i.e., MACMA No.1590 of 2010, is dismissed. The appeal filed by the claimants i.e., MACMA No.1004 of 2010, is allowed by awarding compensation of Rs.4,30,000/- with interest at 7.5% per annum from the date of petition till realization against respondents 1 and 2. The respondents are directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same. The claimants are directed to pay the Court fee for the compensation awarded over and above the compensation claimed in the original petition. No costs. Miscellaneous petitions, if any pending, shall stand closed.

29th January, 2018

KSM

GUDISEVA SHYAM PRASAD, J



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. Nos. 1004 and 1590 of 2010

29th January, 2018

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