

THE HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.2238 of 2007 and 4497 of 2008

M.A.C.M.A.No.2238 of 2007

%04.10.2018

Gunji Venkata Rao and another

...Appellants

VERSUS

\$ Talakayala Manikya Rao and two others

...Respondents

M.A.C.M.A.No.4497 of 2008

The New India Assurance Company Limited

...Appellant

And

\$ Gunji Venkata Rao and three others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Appellants in

MACMA No.2238 of 2007 : Sri N Krishna Murthy

^ Counsel for Respondent No.2 : Sri Naresh Byrapaneni

!Counsel for Appellant in

MACMA No.4497 of 2008 : Sri Naresh Byrapaneni

^ Counsel for Respondent Nos.3&4 : Sri Ravindranath Reddy

? Cases referred

1. (2015) 9 SCC 273
2. 2015(6) SCC 347
3. AIR 2009 SC 3104

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.2238 of 2007 and 4497 of 2008

COMMON JUDGMENT:

Since the facts of the case, the issues involved and the order under challenge in both these appeals are similar, both these appeals are being disposed of by this common judgment.

2. Challenging the Order dated 11.06.2007 passed in M.V.O.P.No.298 of 2005 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole ('the Tribunal', for brevity), the claimants preferred M.A.C.M.A.No.2238 of 2007 seeking enhancement of compensation and the New India Assurance Company Limited preferred M.A.C.M.A.No.4497 of 2005 seeking to set aside the impugned order.

3. Heard the learned counsel for both sides and perused the record. For convenience, the parties are hereinafter referred to as per their array before the Tribunal.

4. The learned counsel for the appellant-claimant would contend that the deceased-Gunji Ravi was 18 years old. He was attending building construction work and drawing Rs.4,500/- per month. There is oral and documentary evidence to substantiate the same. However, the Tribunal erroneously took the income of the deceased as Rs.1,500/- per month, deducted 1/3rd thereof towards his personal expenses, applied the multiplier of '13' and awarded Rs.1,56,000/- towards loss of dependency. The Tribunal also awarded Rs.5,000/- towards loss of love and

affection and Rs.5,000/- towards funeral expenses. In all, the Tribunal granted compensation of Rs.1,66,000/-, which is meagre and ultimately, prayed to enhance the compensation. Learned counsel also contended that the Tribunal had rightly found that both the vehicles are responsible for the accident. So, all the respondents are jointly and severally liable to pay compensation. He relied on the decision reported in *Khenyei v. New India Assurance Company Limited and others*¹.

5. On the other hand, the learned Standing Counsel for the New India Assurance Company Limited contend that the Tribunal had apportioned the liability between the two vehicles, auto bearing registration No.AP 27V 5026 and the tractor and trailer bearing registration No.AP 7T 9164 and 9165 in the ratio of 50:50. The Tribunal ought to have apportioned the compensation awarded between the two vehicle owners, so also the insurers. The Tribunal did not choose to do so. The Tribunal erroneously fastened the liability against the respondent-insurer along with other respondents to pay compensation jointly and severally. It is unsustainable in view of the mandate given under Section 147 of the Motor Vehicles Act and also contended that the compensation awarded is excessive. There are no grounds to enhance the compensation and ultimately, prayed to dismiss the appeal filed for enhancement of compensation and allow the appeal filed by the respondent-insurance company.

¹ (2015)9SCC 273

6. In view of the submissions made by both sides, there is no dispute with regard to the involvement of auto bearing registration No.AP 27V 5026 and tractor and trailer bearing No.AP 7T 9164 and 9165 in the subject accident which resulted in death of the deceased-Gunji Ravi. The Tribunal while answering issue No.1 i.e., "whether there is contributory negligence on the part of driver of both vehicles, viz., auto bearing No.AP 27V 5026 and tractor and trailer bearing No.AP 7T 9164 and 9165" held that both the drivers of the vehicles are equally responsible for causing the accident on 15.07.2005 and for the death of the deceased in the said accident. The Tribunal had elaborately analysed the evidence and recorded the said finding. Hence, there is no need to interfere with the same.

7. Now, the points that arise for determination are as follows:-

- 1) Whether the claimants are entitled for enhancement of compensation?
- 2) Whether the New India Assurance Company Limited be directed to pay only 50% compensation jointly and severally along with the owner of the auto bearing registration No.AP 27V 5026?
- 3) Whether the impugned order passed against the insurance company is liable to be set aside as prayed by New India Assurance Company Limited in MACMA No.4497 of 2005

POINT No.1:-

8. To substantiate the claim, the claimants have examined P.Ws.1 and 2. P.W.1 is the father of the deceased-Gunji Ravi, who deposed about the death of his son in a motor

accident that occurred on 15.07.2005 and also the nature of the occupation and income of the deceased. P.W.2 deposed the source of income of the deceased. His evidence is that the deceased was 18 years old and attending building construction work. Admittedly, no document is filed to substantiate the same. There is no doubt that the deceased was 18 years old. Generally, on attaining 18 years, boys undertake some work to support their parents. The Tribunal took his monthly income as Rs.1,500/-, which is on lower side. The accident occurred in the year 2005. The earning capabilities are required to be taken keeping in view the nature of the occupation of the deceased i.e., construction work, including some future hike, his monthly income can be taken as Rs.3,000/-, which comes to Rs.36,000/- per annum. There were two dependants on the deceased. Moreover, since the deceased was a bachelor, half of the income is required to be deducted towards his personal expenses. As per the decision of the Apex Court in *Munnalal Jain and others v. Vipin Kumar Sharma and others*², where the deceased was a bachelor, relevant multiplier applicable to his age group has to be taken into consideration. As per the decision of the Apex Court in *Sarla Verma v. Delhi Transport Corporation*³, the appropriate multiplier to the age (18 years) of the deceased is '18'. Thus, the total loss of dependency would come to Rs.3,24,000/- (Rs.36,000/- minus 50% x 18). The claimants are also entitled for a sum of Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of estate. In all,

² 2015(6) SCC 347

³ AIR 2009 SC 3104

they are entitled for compensation of Rs.3,54,000/- (Rs.3,24,000/- + Rs.15,000/- + Rs.15,000/-).

9. While dealing with the subject matter, the Tribunal held that there was contributory negligence between drivers of two vehicles and that owners and insurers of both the vehicles are jointly and severally liable to pay the compensation. It is appropriate to extract paras 22.2 and 22.3 in *Khenyei's* case (1 supra).

"22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings."

So, when there is contributory negligence on the part of both the vehicles, both the drivers and insurer are jointly and severally liable to pay the compensation to the claimants. It is made clear that in view of the contributory negligence on the part of each vehicle i.e., 50%, both the respondents 1 and 2 are liable to pay 50% and respondent No.3, being the owner of the tractor and trailer bearing No.AP 7T 9164 and 9165 is liable to pay other 50% of the compensation awarded. However, as far as the claimants are concerned, they can collect the total compensation

from any of the respondents. There is no bar on that. Therefore, the direction of the Tribunal against the respondents 1 to 3 to pay compensation awarded jointly and severally cannot be faulted. It is in accordance with the decision referred above. As it was already determined by the Tribunal as well as by this Court, both the drivers of the vehicles, i.e., driver of the auto bearing registration No.AP 27V 5026 and the driver of the tractor-trailer bearing registration Nos.AP 7T 9164 & 9165 are equally responsible for the occurrence of the subject accident and the death of the deceased in this case. Therefore, 50% of the compensation awarded is payable by the respondents Nos.1 and 2 in MACMA No.2238 of 2007, being the owner and insurer of the auto bearing registration No.AP 27V 5026, and the remaining 50% of compensation awarded is payable by the respondent No.3 in MACMA No.2238 of 2007 (P.Hari Babu), being the owner of the tractor-trailer bearing registration Nos.AP 7T 9164 & 9165. As contended by the learned Standing Counsel for respondent No.2/New India Assurance Company Limited, in the event of the respondent No.2/New India Assurance Company Limited paying the entire compensation awarded in this case, it is entitled to recover 50% of the compensation awarded from the respondent No.3 in MACMA No.2238 of 2007/P.Hari Babu (owner of the tractor-trailer bearing registration Nos.AP 7T 9164 & 9165) in the same proceedings before the Tribunal, by filing an Execution Petition.

10. In the result, the appeal filed by the claimants in M.A.C.M.A.No.2238 of 2007 is partly allowed enhancing the

compensation from Rs.1,66,000/- to Rs.3,54,000/- with interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. On such deposit, both the claimants are permitted to withdraw the enhanced compensation along with the interest accrued thereon, equally. The direction given by the Tribunal to respondents 1 to 3 to pay the compensation jointly and severally holds good. As already indicated above, in the event of the respondent No.2/New India Assurance Company Limited paying the entire compensation awarded in this case, it is entitled to recover 50% of the compensation from the respondent No.3/P.Hari Babu (owner of the tractor-trailer bearing registration Nos.AP 7T 9164 & 9165) in the same proceedings before the Tribunal, by filing an Execution Petition. With this modification, M.A.C.M.A.No.4497 of 2005 filed by the New India Assurance Company Limited is disposed of.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date : 04.10.2018

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