

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

M.A.C.M.A. No. 228 of 2013

Between:

National Insurance Company Limited

.....Appellant

AND

1. Gorla Venkatamma and 3 others

.....Respondents

Date of Judgment pronounced on : 16.03.2018

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. No. 228 of 2013**

% 16.03.2018

1. National Insurance Company Limited

.....Appellant

Versus

\$ 1. Gorla Venkatamma and 3 others

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellant : Mr. Naresh Byrapaneni

^ Counsel for the Respondents : Mr. Bajrang Singh Thakur

? Cases referred

¹ (2009) 6 SCC 121

² (2011) 14 Supreme Court Cases 639

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 228 of 2013

JUDGMENT:

This appeal is arising out of the Order and Decree dated 13.12.2010 passed in O.P. No.96 of 2008 by the IV Additional District Judge, Mahabubnagar (for short, 'the Tribunal').

2. Brief facts of the case are that on 02.12.2007, at about 8:30 PM, while the deceased G. Balraj, along with one Golla Mallesh, was proceeding from Ranipet towards Jadcherla on motorcycle bearing No.AAM 3357 and when they reached Kothapally village outskirts, an Oil Tanker bearing No.AP-16TW-869 came in opposite direction and dashed against the motorcycle of the deceased. As a result, the deceased fell down and sustained injuries to his head and died on the spot. Alleging that the accident occurred due to the rash and negligent driving by the driver of the Oil Tanker, the petitioners, who are the legal representatives of the deceased G. Balraj filed the claim petition claiming compensation of Rs.6,00,000/- against respondents 1 and 2, the owner and insurer, of the crime vehicle.

The 1st respondent-owner had remained ex parte. The 2nd respondent filed counter *inter alia* denying the allegations in the claim petition. The insurer has also denied that the deceased was

earning Rs.200/- per day by working as a motorcycle mechanic, and it is also contended that the driver of the crime vehicle was not having valid driving licence at the time of accident.

Basing on the pleadings, the Tribunal framed three issues. The first issue is with regard to the aspect of rash and negligence; the second with regard to the entitlement of the petitioners to compensation; and the third with regard to the relief.

On behalf of the petitioners, PWs.1 to 3 were examined, and the documents Exs.A1 to A6 were marked. Neither oral nor documentary evidence was adduced on behalf of the 2nd respondent-insurance company.

The Tribunal, on consideration of the evidence available on record, has held that the accident occurred due to the rash and negligent driving by the driver of the crime vehicle and, therefore, awarded compensation of Rs.2,52,000/- with interest at 9% per annum from the date of petition till realisation, holding respondents 1 and 2 jointly and severally liable to pay the compensation.

Aggrieved by the Order passed by the Tribunal, the 2nd respondent-insurer filed this appeal.

3. Heard the arguments of Sri Naresh Byrapaneni, learned counsel for the insurance company; and Sri Bajrang Singh Thakur, learned counsel for the petitioners-claimants.

4. Learned counsel for the appellant-insurance company mainly contended that the Tribunal has deducted 1/3rd from the income of the deceased towards personal expenditure, whereas the Tribunal ought to have deducted 50% in the light of the judgment in **Sarla Verma v. Delhi Transport Corporation**¹, as the deceased was a bachelor by the date of accident.

5. Per contra the learned counsel for the respondents-claimants submitted that the Tribunal has erroneously taken the age of the mother of the deceased for calculation of compensation, but whereas the Tribunal ought to have taken the age of the deceased, and had the age of the deceased is taken, the appropriate multiplier would be '18' as per **Sarla Verma (1 supra)**. And, therefore, deducting 50% of the income towards personal expenditure as the deceased was a bachelor, and by taking the correct multiplier '18' for calculating the compensation, the claimants would get a higher compensation. Learned counsel further submits that though the claimants have not filed any cross-objections or a cross appeal seeking enhancement of compensation, this Court can award just and reasonable compensation based on the facts and circumstances of the case.

¹ (2009) 6 SCC 121

6. Adverting to the submissions made by the respondents' counsel, the learned counsel for the appellant submitted that in the light of the judgment of the Hon'ble Supreme Court in **Ranjana Prakash v. Divisional Manager**², even though the claimants are entitled to get higher compensation than that was awarded by the Tribunal, however, in an appeal filed by the insurance company, the claimants cannot seek enhancement of compensation.

7. In **Ranjana Prakash (2 supra)**, the Hon'ble Supreme Court in paragraphs 7 and 8, held as under:

"7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an

² (2011) 14 Supreme Court Cases 639

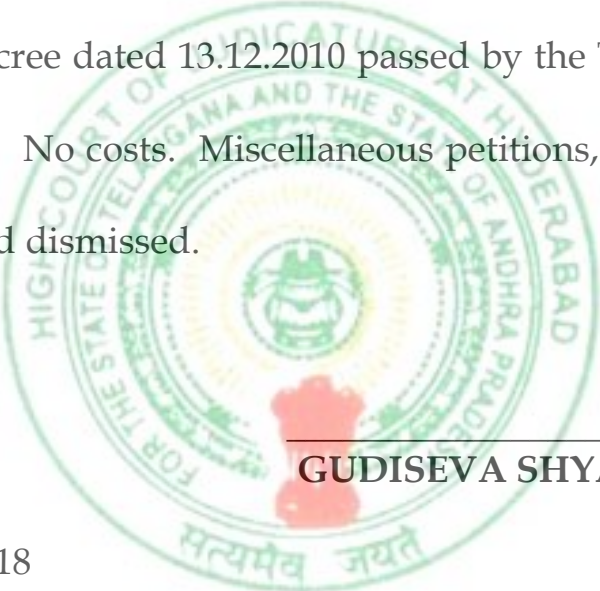
appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

8. Placing reliance on the judgment in **Ranjana Prakash (2 supra)**, learned counsel for the appellant submitted that the High Court cannot obviously increase the compensation in an appeal filed by the owner/insurer for reduction of compensation. It is submitted that the insurance company has come before this Court challenging the quantum of compensation awarded by the Tribunal and, therefore, this Court cannot enhance compensation in an appeal filed by the insurance company.

9. As a matter of fact, in **Sarla Verma (1 supra)**, it was held that in the case of bachelor, 50% of income has to be deducted towards personal expenditure, and the age of the deceased has to be taken into consideration for awarding of compensation. In the instant case, the Tribunal has deducted 1/3rd towards personal expenditure and has taken the age of the mother of the deceased for awarding of compensation. These are the two obvious mistakes appearing in the order passed by the Tribunal. If this Court makes the calculation by taking into consideration the decision rendered in **Sarla Verma (1 supra)**, the benefit would go to the respondents-claimants and not to the appellant-insurer. In the light of the judgment in **Ranjana Prakash (2 supra)**, in an appeal filed by the insurance company for reducing the

compensation, the claimants cannot seek for enhancement of compensation. Therefore, I am of the considered view that though the claimants are entitled for enhancement of compensation, they are not entitled for the same in an appeal filed by the insurance company, as per the decision rendered in **Ranjana Prakash (2 supra)**. Therefore, the appeal fails and the same is liable to be dismissed.

10. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 13.12.2010 passed by the Tribunal in O.P. No.96 of 2008. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

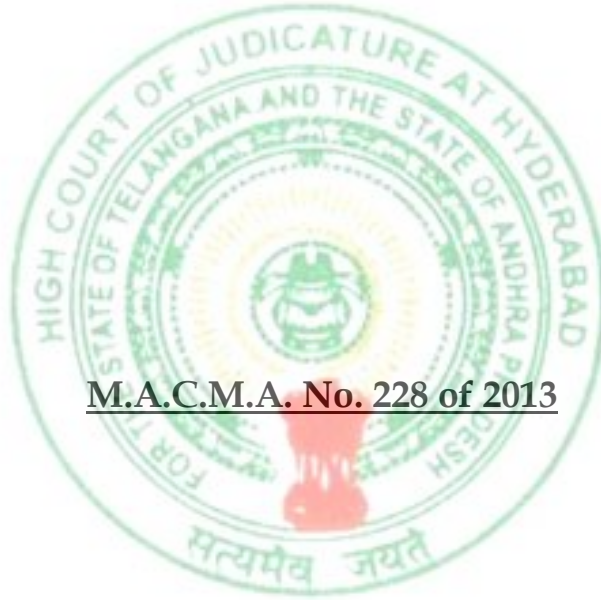


GUDISEVA SHYAM PRASAD, J

16th March, 2018

KSM

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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