

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1352 of 2007

and

Cross Objections (SR) No.21992 of 2010

JUDGMENT:-

Challenging the Order, dated 30.09.2004, passed in M.V.O.P.No.67 of 1999 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittoor ('the Tribunal', for brevity), the United India Insurance Company Limited preferred M.A.C.M.A.No.1352 of 2007 seeking to set aside the impugned Order and the claimants preferred Cross Objections (SR) No.21992 of 2010 seeking enhancement of compensation.

2. Heard the learned counsel for both sides and perused the record. The parties are hereinafter referred to, as arrayed before the Tribunal.

3. The learned Standing Counsel for the appellant in MACMA No.1352 of 2007 and 1st respondent in Cross Objections (SR) No.21992 of 2010 (Insurance Company) would contend that the Tribunal had granted excess compensation of Rs.1,38,200/- as against a claim of Rs.3,00,000/-. The deceased was a gratuitous passenger in the offending lorry bearing registration No.AP-26-T-549. The Tribunal erroneously tagged the liability against the Insurance Company by ignoring the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others¹. In the decision rendered by the Apex Court in National Insurance Company Limited Vs. Baljit Kaur and

¹ 2003 (2) SCC 223

others², the application of the decision of the Apex Court in Asha Rani's case (1 supra) has been clarified. Since the deceased was travelling as a gratuitous passenger in the offending lorry, the Tribunal ought not have tagged the liability against the Insurance Company and ultimately prayed to set aside the Order under challenge.

4. On the other hand, the learned counsel for the Cross Objectors in Cross Objections (SR) No.21992 of 2010/respondents 1 to 5 in MACMA No.1352 of 2007 (claimants) would contend that the Tribunal justified in not applying the decision of the Apex Court in Asha Rani's case (1 supra) to the facts of the case on hand, since the subject accident occurred in the year 1997, i.e., not prior to the year 1994. The deceased was travelling in the offending vehicle as owner of the ground nut bags. In view of the decision of the Apex Court in Baljit Kaur's case (2 supra), the Insurance Company is liable to pay compensation and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the Tribunal justified in granting compensation of Rs.1,38,200/- with interest at the rate of 9% per annum in favour of the claimants?
2. Whether the impugned judgment and decree passed by the Court below is liable to be set aside.

² 2004 (1) TAC 336 (SC)

Point No.1:-

6. The Tribunal, while dealing with the subject matter, held that on 18.10.1997, while the deceased-B.Venkatesu was travelling in the offending lorry bearing registration No.AP-26-T-549, he suffered injuries due to the rash and negligent driving of the driver of the said lorry and succumbed to the same. The Tribunal took the correct age of the deceased, assessed the compensation payable to the claimants, who are his wife, children and parents, at Rs.1,38,200/- and awarded the same. The subject accident occurred on 18.10.1997. The earning capabilities of the persons as on the date of accident were not much. In view of the same, the Tribunal rightly assessed and granted the compensation in favour of claimants and this Court do not see any reason to vary the same. Accordingly, the Cross Objections (SR) No.21992 of 2010 filed by the claimants is liable to be dismissed.

Point No.2:-

7. As per the oral and documentary evidence on record, the deceased-B.Venkatesu was travelling in the offending lorry bearing registration No.AP-26-T-549 on the date of accident. As per Ex.B.3, the offending lorry was validly insured with the appellant-Insurance Company as on the date of accident. As per Ex.A.1-FIR, the deceased and another person boarded the offending lorry to go to their village, since they could not catch a bus. It was contended before the Tribunal that the deceased was travelling in the offending lorry with groundnut bags. As per

the evidence on record, the deceased was not travelling in the offending lorry as owner of goods and he was a gratuitous passenger travelling in the offending lorry.

8. It is apt to refer the decision of the Apex Court in Asha Rani's case (1 supra), wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in the circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. As per the decision of the Apex Court in Baljit Kaur's case (2 supra), the decision of the Apex Court in Asha Rani's case (1 supra) is prospective in nature. The impugned order was passed by the Tribunal on 30.09.2004, i.e., after the decision rendered by the Apex Court in Asha Rani's case (1 supra) on 17.08.2001.

9. The learned counsel for the claimants relied on the decision of the Apex Court in Manuara Khatun and others Vs. Rajesh Kumar Singh and others³. In the cited case, the deceased was travelling in a Tata Sumo. The insurance policy of the said vehicle is an 'act Policy' and it is a passenger vehicle. In view of the same, the Apex Court directed the insurer to satisfy the award at the first instance and then recover the same from the insured in the same proceedings by filing Execution Application before the Tribunal. In the instant case, the deceased was a gratuitous passenger travelling in the offending lorry, which is a goods vehicle but not a passenger vehicle.

³ (2017) 4 Supreme Court Cases 796

Viewed from any angle, in view of the decisions rendered by the Apex Court in all the three decisions cited above, no direction can be given to the Insurance Company to pay the compensation at the first instance and then recover the same from the owner of the offending vehicle. Under these circumstances, the Tribunal ought not have passed the impugned order awarding compensation against the Insurance Company. Therefore, the impugned order is liable to be set aside.

10. Accordingly, M.A.C.M.A.No.1352 of 2007 filed by the Insurance Company is allowed and the impugned Order, dated 30.09.2004, passed in M.V.O.P.No.67 of 1999 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittoor, against the appellant-Insurance Company is set aside. Cross Objection (SR) No.21992 of 2010 is dismissed.

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

Dr. SHAMEEM AKTHER, J

28th August, 2018
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