THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 192 OF 2012

Judgment:

This MACMA is directed against the order and decree dated 27.10.2006 passed in OP No.366 of 2005 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Additional District Judge, Karimnagar, whereby and whereunder the appellant – Insurance Company was directed to pay the compensation of Rs.2,68,500/- to the claimants and then recover the same from the owner of the Auto.

2. For the sake of convenience the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts of the case in brief are that the petitioners 1 and 2 are the father and mother of the deceased respectively; on 31.05.2004 the deceased namely Cherala Ravi Kiran went to his relatives house at Jammikunta and he was travelling in the Auto bearing registration No.AP 1U 4138 and at about 23.30 hours when the Auto reached near Ayyappa Swamy Temple, Jammikunta, the first respondent – driver of the Auto drove the same in a rash and negligent manner at high speed, as a result of which the Auto turned turtle and the deceased received injuries and died while undergoing treatment; the deceased was aged about 26 years and unmarried; he did M.Sc., and used to work as part-time Computer designer at Vasavi Printers, Warangal and earning Rs.3,600/- per month; he was waiting for a suitable job for his qualifications; the respondents 3 and 5 are the owners of the Auto and the same was insured with the fourth respondent – Insurance Company, hence they are jointly and severally liable to pay compensation of Rs.5,00,000/- to the petitioners – claimants for the death of the deceased in the accident.

4. The respondents 1 to 3 and 5 remained *ex parte*. The fourth respondent – Insurance Company filed counter denying the averments made by the petitioners.

5. The Tribunal, based on the above pleadings, framed three issues. On behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A14 were marked. On behalf of the respondents, RW.1 was examined and Exs.B1 and B2 - the copies of insurance policy and B-Register Form-24 are filed.

6. The Tribunal, on appraisal of the entire oral and documentary evidence on record, held on issue No.1 that the accident occurred due to rash and negligent driving of the Auto by its driver. On issue No.2, the Tribunal taking the income of the deceased at Rs.3,000/- per month deducted 1/3rd towards personal expenses and then applying the multiplier '11' based on the age of the mother of the deceased as 48 years, estimated the loss of dependency at Rs.2,64,000/- (Rs.24,000/- x 11). In addition to that, the Tribunal awarded Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate. Thus, the Tribunal granted total compensation of Rs.2,68,500/- with interest at 6% p.a., from the date of petition till realization against the respondents 1 to 3 and 5. The petition against the fourth respondent – Insurance Company was dismissed, however, the fourth respondent – Insurance Company was directed to deposit the awarded amount and then recover the same from the fifth respondent.

7. Challenging the same, the Insurance Company preferred the present appeal against the respondents 1 and 2 - claimants and the respondents 5 and 6 - owners of the Auto. The respondents 3 and 4 - drivers of the Auto were shown as 'not necessary parties to the appeal'.

The appeal against the fifth respondent was dismissed for default by orders of this Court dated 15.11.2010.

8. Heard learned counsel for the appellant – Insurance Company and learned counsel for the respondents 1 and 2 – claimants.

9. The main contention of the learned counsel for the appellant – Insurance Company in this appeal is that since the Auto was overloaded in violation of the permit as well as the policy conditions at the time of accident and the driver of the Auto was not having valid driving license, the Insurance Company is not liable to pay any amount and the Tribunal, in spite of dismissing the petition against the Insurance Company, erred in directing them to pay the awarded amount and recover the same from the fifth respondent.

10. The appellant – Insurance Company is not seriously disputing the quantum of compensation awarded by the Tribunal, hence there is no need to go into that aspect. However, as seen from the record, the Tribunal applied the wrong multiplier '11' instead of applying the multiplier '13', as per the decision of Sarla Verma v. Delhi Transport Corporation[1], and if the same is applied, the claimants would get more compensation amount than the amount awarded by the Tribunal. Further, the amount awarded by the Tribunal towards loss of estate is also on lower side. But, since the claimants did not file any appeal or cross-objections the same cannot be granted in the appeal filed by the Insurance Company.

11. Coming to the question of fastening the liability on the Insurance Company and directing them to pay the awarded amount and recover the same from the fifth respondent – owner of the Auto, a perusal of the

[1] (2009) 6 SCC 121

record would show that, admittedly, the policy was in force as on the date of accident. However, since the evidence on record shows that at the time of accident the Auto was overloaded and the driver was not having valid driving licence, thereby violated the policy conditions, the Tribunal, by relying on the decision of the Hon'ble Supreme Court reported in M/s. National Insurance Company Limited v. Baljith Kour[2], directed the appellant – Insurance Company to pay the compensation amount at the first instance and then recover the same from the fifth respondent – owner of the Auto. In the similar circumstances, the Hon'ble Supreme Court in National Insurance Company Limited v. Swaran Singh[3], also held to the same effect. In the circumstances, I see no reason to interfere with the well reasoned order passed by the Tribunal.

12. The MACMA fails and is, accordingly, dismissed. There shall be no order as to costs.

13. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 29th November 2018
Nsr

[2] (2004) 2 SCC 1
[3] (2004) 3 SCC 297