

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. 232 of 2014

Between:

Nadendla Prasada Rao

... Appellant

AND

1. Myneni Srinivasa Rao and 2 others

.... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 232 of 2014**

% 29.01.2018

Nadendla Prasada Rao

.....Appellant

Versus

\$ 1. Myneni Srinivasa Rao and 2 others

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellant : Sri B. Parameswara Rao

^ Counsel for the Respondents : Sri R.K. Suri for R3

? Cases referred

¹ 2004 ACJ 1 (SC)

² (2008) 3 SCC 464

³ 2008 ACJ 627

⁴ (2013) 7 SCC 62

⁵ (2009) 6 SCC 121

⁶ MANU/SC/7680/2008



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 232 of 2014

JUDGMENT:

This appeal is arising out of the Order and Decree dated 15.06.2011 passed in MVOP No.207 of 2010 by the Chairman, MACT-cum-XI Additional District Judge (Fast Track Court), Guntur, at Tenali. The appellant is the claimant. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- against respondents 1 to 3, on account of the injuries and permanent disability suffered by him in the motor vehicle accident, occurred on 01.11.2009 at 4:00 PM while he was riding a motorcycle, and on being hit by an auto bearing No.AP 7X 5955. Respondent Nos.1 to 3 are the driver, owner and the insurer of the crime auto. The Tribunal has forfeited the right of 1st respondent to file written statement. The 2nd respondent-owner had remained *ex parte*. The 3rd respondent-insurance company had filed written statement denying its liability on the ground that the driver had no licence to drive a transport vehicle, and therefore it is violation of terms and conditions of insurance policy and hence the insurance company is not liable to pay compensation. The Tribunal, on consideration of the evidence, held that the accident had occurred due to the rash and negligent driving by the driver of auto and awarded compensation of Rs.1,12,683/- against respondents 1 and 2, who are the driver and owner of the crime auto, and exonerated the liability of the 3rd respondent-insurance company by placing reliance on the decisions in **National Insurance Co. Ltd., v. Swaran Singh**¹; **National Insurance Co. Ltd., v. Annappa Irappa Nesaria**²; and **New India Assurance Co. Ltd., v. Prabhu Lal**³. Aggrieved by the exoneration of liability of the insurance company, and also having

¹ 2004 ACJ 1 (SC)

² (2008) 3 SCC 464

³ 2008 ACJ 627

dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant had filed this appeal.

2. Heard the arguments of learned counsel Sri B. Parameswara Rao for the appellant-claimant, and learned counsel Sri R.K. Suri, for the respondent-insurance company.

3. The point for consideration is (i) whether the insurance company is liable to pay compensation and, (ii) whether the appellant is entitled for enhancement of compensation.

4. Learned counsel for the appellant submits that the Tribunal erred in exonerating the liability of the insurance company holding that the driver had no driving licence to drive a transport vehicle by the date of accident. Learned counsel argued that though the driver of the crime vehicle had valid driving licence to drive a non-transport vehicle, but he drove a transport vehicle without there being an endorsement on the driving licence to the effect that, however, the liability of the insurance company cannot be exonerated on that ground in view of the judgment in **Iyyapan v. United India Insurance Co. Ltd.**⁴. Learned counsel has drawn attention to paragraphs 18 and 19 of **Iyyapan**, wherein it was observed, 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

⁴ (2013) 7 SCC 62

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.

5. In the case on hand, the driver has licence to drive a non-transport vehicle but he drove a transport vehicle without there being an endorsement on his driving licence to drive a transport vehicle. In the light of the ratio in **Iyyapan**, the liability of insurance company cannot be exonerated on the mere ground of absence of endorsement on the driving licence to drive a transport vehicle. Therefore, the law laid down in **Iyyapan** is applicable to the facts of the present case and, therefore, the liability of the 3rd respondent-insurance company cannot be exonerated.

6. Learned counsel for the appellant contended that the evidence of medical officer-PW2 shows that the appellant suffered 30% disability whereas the Tribunal has taken only 20% disability without giving any cogent reason.

7. As a matter of fact, the Tribunal has not discussed the evidence of PW2-medical officer, who issued medical certificate, stating that the appellant has suffered 30% disability. Though in paragraph 10 of its judgment, the Tribunal has observed that as per the testimony of PW2, the loss of physical function is 30%, it has not given any cogent reasons for reducing the disability from 30% to 20% and calculating the compensation by taking the disability at 20%. Admittedly, the appellant is an agriculturist and, on account of the disability of 30%, he must have faced inconvenience in doing agricultural work and must have suffered loss of earnings due to the disability. The Tribunal has not awarded compensation towards

loss of earnings. The compensation awarded by the Tribunal by taking into consideration the disability at 20%, instead of 30%, is baseless and, therefore, the disability of the appellant has to be taken into consideration as 30% for calculation of compensation.

8. Learned counsel for the appellant submitted that the appellant was 55 years old by the date of accident, and as per **Sarla Verma v. Delhi Transport Corporation**⁵, the correct multiplier is '11' but the Tribunal has erroneously taken the multiplier '9'.

9. The Tribunal, in paragraph 21 of its judgment, though referred to the multiplier table in II Schedule, has committed an error by applying multiplier '9' to the age of the appellant who was 55 years by the date of accident. No doubt, **Sarla Verma** is a subsequent judgment on the point. Therefore, in the light of the judgment in **Sarla Verma**, multiplier '11' has to be applied for the purpose of calculation of compensation.

10. The Tribunal has taken the notional income of the appellant as Rs.3,000/- per month and the same does not require any interference as it is reasonable in the case of a daily wager. Therefore, taking the notional income of the appellant as Rs.3,000/- per month, and the disability at 30%, the loss of earnings would come to Rs.900/- per month. By applying multiplier '11', the loss of future earnings would come to $\text{Rs.}900 \times 12 \times 11 = \text{Rs.}1,18,800/-$. The amount of Rs.41,883/- granted towards medical expenses does not require any interference as it is reasonable and proved by evidence. The appellant might have suffered loss of earnings as he could not attend to agricultural work during the course of his medical treatment and, therefore, an amount of Rs.6,000/- (@ Rs.3,000 per month for 2 months) is awarded towards loss of past earnings. The compensation of Rs.2,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.10,000/-, considering the nature of

⁵ (2009) 6 SCC 121

injuries suffered by him. The rate of interest at 7.5% per annum awarded by the Tribunal, though argued to be on lower side by the learned counsel for the appellant, requires no interference in the light of the judgment of the Hon'ble Supreme Court in **Dharampal and others Vs. U.P. State Road Transport Corporation**⁶.

11. Therefore, on consideration of the evidence on record, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced to
1.	Pain and Suffering	Rs.2,000/-	Rs.10,000/-
2.	Medical expenses	Rs.41,883/-	Rs.41,883/-
3.	Extra nourishment, transportation	Rs.2,000/-	Rs.2,000/-
4.	Loss of past earnings	Rs.2,000/-	Rs.6,000/-
5	Loss of future earnings	Rs.64,800/-	Rs.1,18,800
	Total	Rs.1,12,683/-	Rs.1,78,683/-

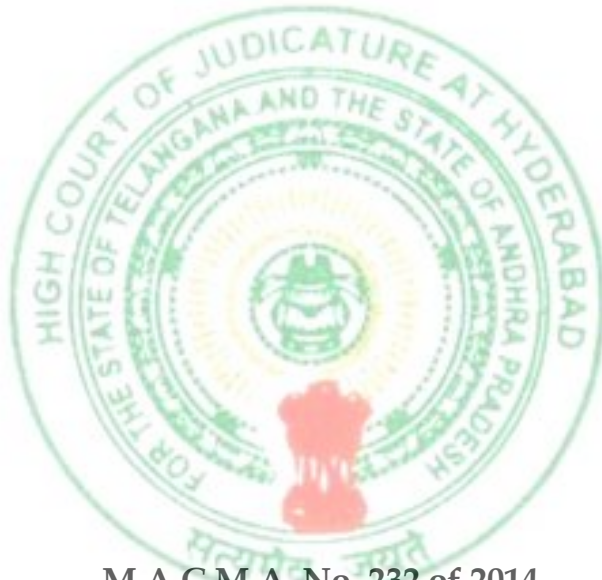
12. **IN THE RESULT**, the appeal is partly allowed by awarding compensation of Rs.1,78,683/- with interest at 7.5% per annum from the date of petition till realisation. The 3rd respondent-insurance company is directed to deposit the amount of compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

29th January, 2018
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⁶ MANU/ SC/ 7680/ 2008

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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