THE HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HONOURABLE SMT JUSTICE T. RAJANI

MA CMA No.2899 of 2013

JUDGMENT: (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellants-claimants have challenged the order dated 11.11.2008 passed in O.P.No.2111 of 2005 by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad.

2. Learned counsel appearing on behalf of the appellants submits that the Tribunal erred in awarding 50% liability on R1 and R2, the owner and insurer of the crime lorry and 50% liability on R3, the owner of the car, which is not insured. He further submits that the entire liability should be fastened on R1 and R2 and the Tribunal has wrongly fastened 50% liability on the owner of the car. He further submits that at the first instance, the insurance company of the offending vehicle i.e., R2, has to pay the entire compensation amount to the claimants and if the insurance company intends to recover the amount, it may file a suit against the owner of the car i.e., R3. To strengthen his arguments, learned counsel for the appellants has relied upon the decision of the Apex Court in **Khenyei V. New India Assurance Company Ltd., and others**[1], wherein it was held as under:

> "This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to

[1] 2015 ACJ 1441

pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tort feasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailor-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tort feasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasors 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 tort feasors 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 tort feasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award.

3. Learned counsel for the appellants further argued that the age of the deceased on the date of accident was 30 years undisputedly, however, the Tribunal has applied wrong multiplier of ‘16.51’ in stead of ‘17’, as per the decision of the Apex Court in **Sarla Verma V Delhi Transport Corporation**[2]**.**

4. Learned counsel for the appellants further submits that admittedly there are five dependants i.e., claimant No.1 is minor son, claimants 2 and 3 are parents and claimants 4 and 5 are unmarried sisters of the deceased Imran Liyaqat, who died in a lorry accident on 09.12.2004, however, the Tribunal has deducted 1/3rd towards his personal expenses instead of 1/4th as there are five claimants in the present case.

5. Learned counsel for the appellants further submits that while awarding compensation to the claimants, the Tribunal has not awarded any amount towards future prospects, whereas in view of the judgment of the Apex Court in **National Insurance Company Ltd., V. Pranay Sethi and others**[3]**,** the claimants are entitled to 40% of future aspects keeping in view the age of the deceased at 30 years, for the reason that the deceased was on a fixed salary working as Data Entry Operator in Zeddah Saudi Arabia.

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[2] (2009) 6 SCC 121
[3] 2017 ACJ 2700

6. Learned counsel appearing on behalf of respondent No.2-insurance company has not disputed any one of the grounds raised by the learned counsel for the appellants. However, he submits that the claimants did not array the owner of car as a party and at request of the insurance company, the owner of car was added. He further submits that the claimants had option to recover the compensation from the owner of the car.

7. We find no substance in the submission of the counsel for respondent No.2-insurance company in view of the judgment of the Apex Court in **Khenyei's** case, supra.

8. Learned counsel for respondent No.2-insurance company further submits that the tax may be deducted from the salary of the deceased.

9. We do not find any substance in the submission of the learned counsel for respondent No.2-insurance company for the reason that the deceased was getting a salary of 2438 Saudi Riyals and on the date of accident, the rate of Saudi Riyal was Rs.12.5 per riyal. Thus, the total salary of the deceased comes to Rs.30,000/- per month. The Tribunal has assessed his monthly income at Rs.20,000/- and after deducting Rs.5,000/- from it, finally it assessed the monthly income of deceased at Rs.15,000/-. Therefore, no further deduction is required, in our considered opinion, since Rs.5,000/- was already deducted. Therefore, the Tribunal has rightly assessed the salary of deceased at Rs.15,000/- per month.

10. Learned counsel for the appellants further argued that towards conventional charges, no amount was awarded by the Tribunal. Therefore, in view of the judgment of the Apex Court in **Pranay Sethi's** case (supra), we hereby award an amount of Rs. 15,000/- towards loss of estate and Rs.15,000/-towards funeral expenses and the entire compensation comes as under:

The Tribunal took the monthly salary of the deceased at Rs.15,000/- per month and annually it comes to Rs.1,80,000/- and if the future prospects at the rate of 40% i.e., Rs.72,000/- is added, it comes to Rs.2,52,000/- (Rs.1,80,000/-+72,000/-). Since the dependants of the deceased are five in number, 1/4th can be deducted towards personal expenses of the deceased and then it comes to Rs.1,89,000/-. Keeping in view the age of the deceased at 30 years at the time of accident, the appropriate multiplier is '17' in stead of '16.51' as taken by the Tribunal. Therefore, the loss of dependency comes to Rs.32,13,000/- (1,89,000/- X 17). In addition to it, as the Tribunal has not granted any compensation towards funeral expenses and loss of estate, in view of the judgment of the Apex Court in **Pranay Sethi's** case (supra), we hereby award an amount of Rs.15,000/-towards funeral expenses and Rs.15,000/- towards loss of estate, as stated supra. Thus, the total compensation comes to Rs.32,43,000/- and the appellants/claimants are entitled to the said compensation. Further, R1 to R3 are jointly and severally liable to pay the compensation to the claimants, and after depositing the said compensation, R2 is at liberty to recover 50% of the compensation from the owner of the car i.e., R3.

11. Therefore, we hereby modify the award as indicated above, with proportionate costs. The apportionment of compensation shall be made in terms of the apportionment made by the Tribunal. The award shall relate back to the date of decree and the compensation awarded shall carry interest at the rate and from the date specified by the Tribunal.

12. Accordingly, the appeal is partly allowed. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

SURESH KUMAR KAIT, J

T. RAJANI, J

30th April, 2018
sj