

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.282, 714 & 1871 OF 2018

COMMON JUDGMENT:

Since these three appeals involve common question of law, they are being disposed of by this common judgment.

M.A.C.M.A.Nos.282 & 714 OF 2018:

2. Both these appeals arise out of an Award passed in M.V.O.P.No.292 of 2011, dated 25-09-2017, on the file of the Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad, (for short, the Tribunal). The appellants/claimants filed MACMA.No.282 of 2018 on the ground that the Tribunal awarded compensation of Rs.14,21,000/-against the claim of Rs.15,00,000/- for the death of Thakur Ashwan Singh, in a motor accident, while the insurance company filed MACMA.No.714 of 2018, on the ground that the deceased is not a third party and hence, it has no liability to pay the compensation.

3. For the purpose of convenience, the parties in both the appeals are hereinafter referred to as they are arrayed in M.A.C.M.A.No.282 of 2018.

4. The brief facts of the case are that on appellant No.1 is the mother, appellant No.2 is the brother and respondent No.1 is the father of the deceased, Thakur Ashwan Singh. The deceased was working as Assistant Cook in Ocean Liner Cruise and earning 688 US \$ per month i.e., Rs.31,000/- per month. The deceased had come to India to visit his family and friends. On the intervening

night of 26/27.07.2010, while he was travelling in one of his friends car, and when they reached flyover at Khairatabad, the driver of the car lost control over it and collided with a street light pole, as a result of which, the deceased sustained fatal injuries and died on the spot. The appellants filed the aforesaid MVOP against respondent Nos.1 and 2, owner and insurer of the aforesaid car, respectively, claiming compensation of Rs.15,00,000/- for the death of the deceased.

MACMA.No.1871 of 2018:

5. This appeal is filed by the appellant/insurance company aggrieved by the Order and Decree dated 22.09.2017 passed in O.P.No.963 of 2014 by the XI Additional Chief Judge, City Civil Court at Hyderabad on the ground that the deceased is not a third party and hence, it has no liability to pay the compensation

6. The brief facts of the case are that on respondent No.1 is the wife, respondent Nos.2 to 4 are children, respondent No.5 is the mother and respondent No.6 is the father of the deceased, G.Venkatesham. On 14.10.2013, the deceased was proceeding on motorcycle bearing No.AP28DQ 6901. At about 19.00 hours, when he reached near Professor Ramreddy Engineering College, Nandigama Village, it was raining and at the same time, one lorry came from back side and one lorry came from opposite direction with heavy focus head lights, for which, the deceased to avoid accident, took his bike towards the left side of the road and hit a tree and fell down on the road. In the said accident, he received

bleeding injuries and died on the spot. Respondent Nos.1 to 5 herein filed the aforesaid OP against owner of motorcycle (respondent No.6 herein) and the insurer of motorcycle (appellant herein), claiming compensation of Rs.9,00,000/- for the death of the deceased.

7. Sri E.Venugopal Reddy, learned counsel for the appellants in MACMA.No.282 of 2018 and Sri P.Chandra Mouli, learned counsel for respondent Nos.1 to 6 in MACMA.No.1871 of 2018, submitted that where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in private car. Therefore, the Tribunal rightly held that respondent No.2-insurance company is liable to pay compensation to the claimants. He further submitted that the Tribunal ought to have considered the income of the deceased at Rs.32,000/- per month, instead of Rs.8,000/- per month and sought to enhance the compensation. In support of their arguments, they relied upon the decisions of the Hon'ble Supreme Court in **Chanderi Devi V. Jaspal Singh**¹ and **National Insurance Company Ltd. V. Balakrishnan**².

8. Sri A.Ramakrishna Reddy, learned counsel for the appellants in MACMA.Nos.714 and 1871 of 2018, submitted that the deceased was not a third party within the meaning of the Motor Vehicles Act,

¹ (2015) 11 SCC 703

² 2013 (1) An.W.R. 256 (SC)

1988 (for short, the Act), as he is the son of the owner of the crime vehicle (respondent No.1) and hence, he cannot be treated as a third party to the proceedings. He further submitted that kith and kin of insured and their legal representatives in the event of their death in accident can sustain claim for compensation as third party claims, provided relevant policy of insurance covers such a risk-existence and extent of liability of insurer governed by specific terms and conditions of policy. In the present case, as the additional premium was not paid in respect of the entire risk of death or bodily injury to the owner of the crime vehicle, the appellants are not entitled to any compensation and sought to set aside the order of the Tribunal. In support of his arguments, he relied upon the decision of the Apex Court in **New India Assurance Company Ltd. V. Sadanand Mukhi**³ and a decision of this Court in **Jayavarapu Rajamma V. Jayavarapu Laxminarayana**⁴.

9. In view of the above contentions, the main question that arises for consideration is *‘whether the deceased are third parties and whether the claimants are entitled to compensation, as directed by the Tribunal? If so, whether there are any grounds to enhance the compensation in MACMA.No.282 of 2018?*

10. To decide the question whether the deceased is a third party or not, it is necessary to refer Sections 146 and 147 of the Act and they read as under:

“146 Necessity for insurance against third party risk. —

(1) No person shall use, except as a passenger, or cause

³ 2009 (2) SCC 417

⁴ 2007 (6) ALD 306

or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation. —A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) ---

147. Requirements of policies and limits of liability. —

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
 - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

11. In **Chanderi Devi's** case (supra), the Hon'ble Supreme Court, in the facts of that case, fixed the income of the deceased therein at Rs.15,000/- per month, who was working as an Indian cook in a restaurant in Germany, earning about 1145 Euros per month. In **Balakrishnan's** case (supra), as there was no clarity with regard to the policy in question was an act policy or comprehensive/package policy, the Hon'ble Supreme Court, while remanding the matter, directed the Tribunal that if it arrives to the conclusion that the policy in question is a comprehensive/package policy, the liability would be fastened on the insurer. From the same, it is clear that if the vehicle is covered by comprehensive/package policy, the insurer is liable to pay the compensation.

12. In **Sadanand Mukhi's** case (supra), the Hon'ble Supreme Court while dealing with the question whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured, held that the insurance company is not liable. But, the facts in the present case are different. In **Jayavarapu Rajamma's** case (supra), a Division Bench of this Court held that kith and kin of insured and their legal representatives in the event of their death in accident can sustain claim for compensation as third party claims, provided relevant policy of insurance covers such a risk-existence and extent of liability of insurer governed by specific terms and conditions of policy. It also further held that mere nomenclature of the policy as a comprehensive policy or otherwise is not the guide, but the specific terms and conditions of

the policy govern the existence and extent of the liability of the insurer. In the present appeals, the offending vehicles cover by comprehensive/package policies. Though there are no specific terms and conditions in the policies with regard to covering of risk of kith and kin of the deceased, the insurance company is liable to pay the compensation, as per the ratio laid down in **Balakrishnan's** case (supra), from which it can be construed that when the vehicle is covered under a comprehensive/package policy, the insurance company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in private car. Therefore, it can be said that the deceased in these appeals are third parties and are entitled to compensation. Hence, the MACMA.Nos.714 and 1871 of 2018 are liable to be dismissed.

13. Coming to the aspect of enhancement of compensation in MACMA.No.282 of 2018, though the appellants therein filed appointment letter of the deceased, they did not file any document to show the income of the deceased. Hence, in the facts of the case, I am inclined to fix the income of the deceased at Rs.10,000/- per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**⁵. Therefore, monthly income of the deceased comes to Rs.14,000/- (Rs.10,000/- + Rs.4,000/-), and after deduction of 50% as the deceased is a bachelor, the annual income comes to Rs.84,000/- (Rs.7,000/- X 12). As the deceased was aged 24 years

⁵ 2017(6) ALD 170 (SC)

as per Ex.A.6, the appropriate multiplier is '18'. Hence, the compensation under the head 'loss of dependency' comes to Rs.15,12,000/- (Rs.84,000/- X 18). Apart from the same, the appellants are entitled to Rs.30,000/- towards conventional heads, as per **Pranay Sethi's** case (supra). Appellant No.1, being the mother of the deceased, is entitled to Rs.50,000/- towards parental consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**⁶. Therefore, the total compensation comes to Rs.15,92,000/- (Rs.15,12,000/- + Rs.30,000/- + Rs.50,000/-).

14. In the result, MACMA.Nos.714 and 1871 of 2018 are dismissed and MACMA.No.282 is allowed enhancing the compensation amount awarded by the Tribunal from Rs.14,21,000/- to Rs.15,92,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the appellants claimed only Rs.15,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 03.09.2019
TJMR

⁶ 2018 Law Suit (SC) 904