

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * * *

M.A.C.M.A.Nos.601 OF 2011, 1777 OF 2011 AND 1043 OF 2012

Between:

Bajaj Allilanz General Insurance Co.Ltd., and others

....Appellants

And

Mohmmmed Saleem Baba and others

....Respondents

JUDGMENT PRONOUNCED ON: 26.08.2019

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ M.A.C.M.A.Nos.601 OF 2011, 1777 OF 2011 AND 1043 OF 2012

% DATED 26th AUGUST, 2019

Bajaj Allilanz General Insurance Co.Ltd., and others

....Appellants

Vs.

\$ Mohmmmed Saleem Baba and others

....Respondents

<Gist:

>Head Note:

! Counsel for the Appellants : Sri A.Ramakrishna Reddy

^Counsel for the Respondents : Sri Mohd.Abdul Habeem
Sri S.Shashidhar Reddy

? CASES REFERRED:

1. (2009 (6) ALD 684 (DB)
2. 2009 (6) SCC 1211
3. 2017(6) ALD 170 (SC)
4. 2018 Law Suit (SC) 904

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.601 OF 2011, 1777 OF 2011 AND 1043 OF 2012

COMMON JUDGMENT:

The motor vehicle accident that occurred on 24.03.2006 at about 9.00 A.M., in the limits of Chowdarpalli village is the common subject matter in these appeals and, therefore, they are analogously heard and taken up for disposal by this common judgment.

2. The brief facts of the case are as under:

On 24.03.2006 while the injured in O.P.No.224 of 2006 and the deceased in O.P.No.497 of 2006 along with other students were proceeding to college in the auto rickshaw bearing No.AP22U 7460 and when the auto reached near the college gate at about 9.00 AM., the driver of a tractor-trailor bearing No.KA-33/T-2630 & 2631, drove it in high speed, in a rash and negligent manner and dashed the auto in opposite direction, due to which, the inmates of the auto sustained injuries and the deceased died while undergoing treatment.

MACMA No.601 of 2011

3. Alleging that the accident occurred due to the rash and negligent driving by the driver of tractor-trailor, the injured, Mohammed Saleem Baba, filed O.P.No.224 of 2006 before the Motor Accident Claims Tribunal-cum-District Judge, Mahabubnagar, (for short, 'the Tribunal'), against respondent

No.1-owner, and respondent No.2-insurer of tractor-trailer, seeking compensation of Rs.1,00,000/- under various heads.

4. The learned Tribunal, on appreciation of the oral and documentary evidence available on record, held that the accident occurred due to the rash and negligent driving by the driver of tractor-trailor, and awarded a compensation of Rs.20,000/- with interest at 7.5% per annum from the date of petition till realization. Aggrieved by the said order, respondent No.2-Insurer of tractor-trailor filed MACMA No.601 of 2011, on the ground that the cover notes were misplaced from the office and to that effect a paper publication was issued, wherein the subject matter of the cover note number was also mentioned and therefore, respondent No.2 is not liable to pay the compensation.

MACMA Nos. 1777 of 2011 and 1043 of 2012

5. Likewise, the parents of the deceased C.Sandeep, filed O.P.No.497 of 2006 before the Motor Accident Claims Tribunal-cum-District Judge, Mahabubnagar, (for short, 'the Tribunal'), against respondent No.1-owner, and respondent No.2-insurer of tractor-trailor, seeking compensation of 8,00,000/-.

6. On appreciation of the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the tractor-trailor and therefore, awarded a compensation of Rs.3,30,000/- with interest at 7.5% per annum from the date of

petition till realization. Dissatisfied with the quantum of compensation, the appellants filed M.A.C.M.A.No.1777 of 2011, seeking enhancement of the same, while the insurance company filed M.A.C.M.A.No.1043 of 2012 to dismiss the claim against the insurance company.

7. Sri S.Sashidhar Reddy, learned counsel appearing for the appellants in M.A.C.M.A.No.1777 of 2011, submitted that the Tribunal has granted meager amount of Rs.3,30,000/- against the claim of Rs.8,00,000/- towards compensation, which needs to be enhanced. He further submitted that the deceased is an Engineering student and his income can be fixed at Rs.12,000/- per month as per the Judgment in **B.Ramulamma Vs. Venkatesh Bus Union**¹. He further submitted that the deceased was aged about 21 years at the time of accident and the appropriate multiplier as per the decision of the Hon'ble Supreme Court in **Smt. Sarla Varma Vs. Delhi Transport Corporation**², is '18', but the Tribunal wrongly adopted multiplier of '13'. He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and Rs.30,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³. He further submitted that in view of the judgment of the Hon'ble Supreme Court in **Magma General**

¹ (2009 (6) ALD 684 (DB)

² 2009 (6) SCC 1211

³ 2017(6) ALD 170 (SC)

Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others⁴,
the appellants are entitled to Rs.40,000/- each under the head loss of filial consortium.

8. In rebuttal, Sri A.Rama Krishna Reddy, learned counsel appearing for respondent No.2, submitted that though the insurance company adduced evidence to show that cover notes were misplaced from the office and to that effect a paper publication was also issued, wherein the subject matter of the cover note number is also mentioned, the Tribunal erroneously fastened the liability on the insurance company and therefore sought to dismiss M.A.C.M.A.No.1777 of 2011 and allow M.A.C.M.A.No.1043 of 2012. He further submitted that the insurance company never received any premium and has never issued any insurance policy. The cover note is a forged and fabricated document which cannot bind the insurance company.

9. Both the rival contentions when considered together in totality of circumstances, it transpires that the insurance company has failed to bring on record enough evidence to prove that all necessary steps were taken by it when the cover note lost/misplaced. In such circumstances, when the insurance company cannot find out misplaced cover note on earlier occasion, how a *bona fide* owner could have found that some person/agent if issuing a cover note from "loss booklet" having otherwise valid

⁴ 2018 Law Suit (SC) 904

series. Such an argument cannot be permitted to insurance company to wriggle out its liability because no such defence of misplaced cover note are available under the [Motor Vehicles Act](#). It is common knowledge that vehicles are insured in routine through number of agents, they sometimes approach the prospective buyers through telephonically or through personal contact. It cannot be held against the owner that he should have mandatorily visited the office of insurance company. The defence of the insurance company that the owner has willfully ignored the importance of obtaining an insurance policy from the insurance company or the agent to whom the premium has been paid. He should have been vigilant in insisting upon the procurement of valid policy note is not tenable for consideration of the fact that most of the owner treat insurance cover note as equivalent to insurance policy as such owner of offending vehicle cannot be faulted only on this ground. The very important aspect in this case that the insurance cover note is genuine and not a forged document, but merely allegedly misplaced from the records of insurance cover note booklet. The insurance company even after filing accident information report has not placed on record any FIR lodged by it for loss of cover note booklet. The plea of owner of offending vehicle of having paid insurance premium in cash and obtained the cover note is accepted and the vehicle is treated to insured covering the date of accident. The insurance company cannot wriggle out its responsibility to pay compensation to the claimants.

10. It is not in dispute that the agent of the insurance company collected premium from the owner of the tractor-trailor in question covering the period of accident and as such, the insurance company is vicariously liable for the acts of its agent as held in **National Insurance Co.Ltd., Madras V. M.Mandan and another**⁵.

Hence, I find no reason to set aside the finding of the Tribunal in that regard. Therefore, M.A.C.M.A.Nos.601 of 2011 and M.A.C.M.A.No.1043 of 2012 are liable to be dismissed.

11. Coming to the compensation aspect, since the deceased is an Engineer student, his notional income has to be fixed at Rs.12,000/- per month as per **B.Ramulamma's** case (supra). As he is a bachelor, 50% of his income should be deducted towards personal expenditure as per the ratio laid down in **Smt. Sarla Varma's** case (Supra). Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi's** case (supra). Therefore, annual income of the deceased comes to Rs.2,01,600/- (Rs.1,44,000/- + 40% future prospects). After deducting 50% towards personal expenses, the income of the deceased comes to Rs.1,00,800/- per annum. The Tribunal has wrongly adopted the multiplier of '13' instead of '18' as the deceased was aged about 21 years at the time of accident. Hence, the compensation under the head 'loss of dependency' comes to Rs.18,14,400/- (Rs.1,00,800/- X 18). The appellants are also entitled to Rs.30,000/- towards conventional charges, as per

⁵ 2003 Supreme (Mad) 1688

Pranay Sethi's case (supra). In the light of **Nanu Ram's** case (supra), the appellants, being the parents of the deceased, are entitled to Rs.80,000/- (Rs.40,000/- each) towards loss of filial consortium. Therefore, the total compensation comes to Rs.19,24,400/- (Rs.18,14,400/- + Rs.30,000/- + Rs.800,000/-).

12. In the result, M.A.C.M.A.Nos.601 of 2011 and M.A.C.M.A.No.1043 of 2012 are dismissed and M.A.C.M.A.No.1777 of 2011 is allowed enhancing the compensation amount awarded by the Tribunal from Rs.3,30,000/- to Rs.19,24,400/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The appellants are directed to pay the Court fee over above the amount claimed by them. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 26.08.2019

Note:

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