HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.875 & 1349 of 2019

COMMON JUDGMENT:

Since both the appeals arise out of the same O.P., both the appeals are heard together and disposed of together by this common judgment.

2. MACMA.No.875 of 2019 is filed by the Reliance General Insurance Company Limited, who is 5th respondent in M.V.O.P.No.16 of 2018, under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Chairman, Motor Accidents Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court, Secunderabad (for short 'the Tribunal), in M.V.O.P.No.16 of 2018 dated 31.12.2018.

3. MACMA.No.1349 of 2019 is filed by the United India Insurance Company Limited, who is 3rd respondent in M.V.O.P.No.16 of 2018, under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Chairman, Motor Accidents Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court, Secunderabad (for short 'the Tribunal), in M.V.O.P.No.16 of 2018 dated 31.12.2018.

4. The brief facts of the case are that on 17.11.2017 at about 07.45 AM, the deceased was proceeding in auto bearing No.AP-15-X-4349 as occupant to Galipalli to attend her labour work and when they reached Malkapur Peddamma Junction, a milk tanker bearing No.AP-29-TB-4649 came at high speed in a rash and negligent manner and dashed against the auto, due to which the auto turned turtle and as a result, the deceased sustained severe injuries and died while undergoing treatment.

5. The Tribunal after framing the issues and examining the witnesses, allowed the claim of the claimants and awarded Rs.15,67,000/- against the claim amount of Rs.15,00,000/- by fixing contributory negligence equally on the part of the Auto driver and the milk van. Aggrieved by the said order, both the appeals were filed by the two insurance companies.

6. Learned counsel for the appellant in MACMA.No.875 of 2019 contended that the Tribunal ought to have imposed the liability to pay the 50% of the compensation amount only on the insured-owner of the auto as the appellant-insurance company has discharged its burden by examining RW.2 and by producing the copy of insurance policy establishing that the insured auto was carrying 14 persons in excess against the seating capacity of 3+1 (driver) at the time of accident and violated the terms and conditions of the policy and the appellant is not liable to pay any compensation. It is further contended that the insured auto met with an accident resulting in death of 7 passengers in all, whereas the seating capacity of the insured auto is only 3 passengers as per the insurance policy and the appellant is liable only in respect of 3 passengers. It is also submitted that as per the judgment of the Apex court in **National Insurance Company Limited Vs. Anjana Shyam**[1], the insurance company is liable to be pay the 3 highest claims and with regard to the remaining claim amounts, firstly the insurance company has to pay the amount to the claimants and then recover the same from the owner of the vehicle and the same

[1] 2007 ACJ 2129

principle was reiterated by another judgment of the Apex Court in **United India Insurance Company Limited Vs. K.M. Poonam[2]**. It is also contended that the amount awarded by the Tribunal is excessive and the same needs to be set aside by allowing the appeal.

7. Learned counsel for the appellant in MACMA.No.1349 of 2019 contended that the Tribunal failed to see that the alleged accident occurred only due to the rash and negligent driving of the driver of the auto, who was carrying 15 passengers against the seating capacity of 4 (3+1) passengers and accordingly, the Tribunal ought to have fixed the entire negligence on the auto driver and ought to have fixed entire liability on auto driver and its insurance company. It is further contended that the Tribunal erroneously took the notional income of the deceased at Rs.10,000/- per month without any basis. It is also contended that the Tribunal grossly erred in awarding the compensation of Rs.15,67,000/- with interest @ 9% per annum from the date of petition till realization, which is excessive and same is liable to be set aside by allowing of the appeal.

8. Learned counsel for the claimants in both the appeals supported the award of the Tribunal and sought for dismissal of the appeals.

9. Heard both sides and perused the material on record.

10. Admittedly, it is a case of death and there is no dispute with regard to the manner of the accident and involvement of both

[2] 2011 ACJ 917

the vehicles. The collision was between the auto and milk tanker and the deceased was travelling as passenger in Auto along with 14 others and suddenly the auto entered into the road in a rash and negligent manner without following any precautionary measures and suddenly a milk tanker came in a rash and negligent manner and hit the auto. Accordingly, the Tribunal has fastened the liability on both the insurance companies which are insurer of auto and milk tanker. In so far as attributing contributory negligence is concerned, the same is upheld. With regard to the quantum of compensation, the same needs to be considered.

11. So far as quantum of compensation is concerned, the Tribunal has taken the income of the deceased who worked as agricultural labour at Rs.10,000/- per month, which is without any basis and same needs to be modified. As per the expression of the Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Limited**[3] where there is no proof of income, the notional income of the agricultural labour should be taken at Rs.4,500/- per month. Accordingly, the income of the deceased is taken at Rs.4,500/- per month. The age of the deceased is 22 years and '18' multiplier is applicable as per **Sarla Varma Vs. Delhi Transport Corporation**[4]. As per the expression in **National Insurance Company Limited Vs. Pranay Sethi**[5], the deceased being self-employed and aged about 22 years, 40% future

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[3] (2011) 13 SCC 236
[4] 2009 (6) SCC 121
[5] 2017 (6) SCC 170

prospects can be taken into consideration, which comes to Rs.1,800/-, in all deceased monthly income comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). As the deceased is unmarried, 50% has to be deducted towards personal expenses of the deceased. Out of Rs.6,300/-, if 50% is deducted towards the personal expenses of the deceased, the net income comes to Rs.3,150/- (Rs.6,300/- (-) Rs.3,150/-). The loss of dependency comes to Rs.3,150/- x 12 x 18 = Rs.6,80,400/-. The claimant is entitled for Rs.30,000/- under conventional heads as per **Pranay Sethi** supra and the claimant being father of the deceased, he is entitled for Rs.40,000/- under the head of loss of filial as per **Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram**[6]. The total compensation to which the claimant is entitled to is Rs.7,50,400/-.

12. Accordingly and in the result, both the appeals are partly allowed by reducing the compensation amount from Rs.15,67,000/- to Rs.7,50,400/- and the rate of interest is also reduced from 9% to 7.5% per annum from the date of petition till realization as per the expression of the Apex Court in **Rajesh Vs. Rajbir Singh**[7]. The contributory negligence of 50% each on both the appellants is upheld. In so far as 50% contributory negligence is concerned, the appellant-insurance company of the auto i.e., Reliance General Insurance Company Limited shall pay to the maximum of 3 highest claims and the remaining claim amounts, the insurance company firstly shall pay to the claimants and

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[6] 2018 Lawsuit (SC) 904
[7] 2013 ACJ 1403

thereafter recover the same from the owner of the auto. Whereas 50% contributory negligence awarded in favour of the appellant-insurance company of milk van i.e., United India Insurance Company Limited, the insurance company shall pay the respective share amount.

Miscellaneous petitions if any shall stand closed.

T.AMARNATH GOUD, J

Date: 02.01.2020
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