

THE HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. Nos.2486 of 2014 AND 620 OF 2019

COMMON JUDGMENT:

Feeling aggrieved by the order and decree dated 29.10.2013 in OP No.99 of 2011 passed by the I Additional Metropolitan Sessions Judge cum XV Additional Chief Judge, Hyderabad (for short 'the Tribunal'), the Reliance General Insurance Company preferred MACMA No.2486 of 2014 challenging the quantum of compensation awarded by the Tribunal; and the claimants preferred MACMA No.620 of 2019 for enhancement of compensation.

2. Since both the appeals arise out of the same order and the parties are also same, they are disposed of vide this common judgment.

3. Heard the learned Standing Counsel for the Insurance Company and the learned counsel for the claimants.

4. For the sake of convenience, the appellant in MACMA No.2486 of 2014 is referred to as 'Insurer' and the appellants in MACMA No.620 of 2019 are referred to as 'claimants.'

5. *Vide* aforesaid order, the Tribunal has awarded an amount of Rs.11,23,560/- with 7.5% interest from the date of petition till the date of realization to the claimants against the owner and insurer of the offending vehicle as against the claim of Rs.20,00,000/- laid by the

claimants for the death of deceased in a motor accident occurred on 23.02.2010.

6. On considering the entire evidence, both oral and documentary, the Tribunal held that the accident had occurred due to the composite negligence on the part of the driver of the offending Lorry (Truck) bearing No.AP 29 V 1527 and also the rider of the motor cycle bearing No.AP 28 S 9612.

7. Disputing both the liability and the quantum of compensation awarded by the Tribunal, the Insurer filed MACMA No.2486 of 2014. Seeking enhancement of compensation, the claimants filed MACMA No.620 of 2019.

8. The Insurer filed the appeal claiming that the accident was due to the negligence of the driver of Hero Honda Motorcycle bearing No. AP 28 S 9612 on which the deceased was traveling, and therefore, there is composite negligence. According to the learned counsel for the Insurer, despite holding that there was composite negligence, the Tribunal did not fix the liability on the owner and insurer of the Hero Honda motorcycle. In fact, the Tribunal failed to consider that the application filed by the claimants in OP No.99 of 2011 under Section 166 of the MV Act is without arraying the owner and insurer of the Hero Honda motorcycle as parties and hence, the OP is not maintainable. He would further contend that the Tribunal having held that the accident had occurred due to composite negligence on the part

of the driver of the offending Lorry (Truck) bearing No.AP 29 V 1527 and also the rider of the motor cycle bearing No.AP 28 S 9612, ought to have dismissed the claim application for non-joinder of the owner and insurer of the Motorcycle. He would further contend that the Tribunal did not consider the documentary evidence and the principle held by the Apex Court in **Sarla Verma v. Delhi Transport Corporation**¹, while awarding the above said amount of Rs.11,23,560/-. The Tribunal erred in deducting 1/5th salary of the deceased towards personal expenses though there are five claimants and the Tribunal has to deduct 1/4th of the income of the deceased towards personal expenses as per the principle held in **Sarla Verma's** case (1 supra). He has also contended that the Tribunal has awarded 7.5% interest on the awarded amount without giving any reasons. According to him, the above said compensation of Rs.11,23,560/- awarded by the Tribunal is excessive. With the said contentions, learned counsel for the Insurer sought to set aside the impugned order.

9. On the other hand, learned counsel for the claimants would contend that the Tribunal has awarded only an amount of Rs.11,23,560/- as against the claim of Rs.20,00,000/- laid by the claimants. According to him, the Tribunal did not consider the age, monthly earning capacity of the deceased properly and did not apply the multiplier in accordance with the principle held by the Apex Court. According to him, the Tribunal did not award any amount

¹ (2009) 6 SCC 121

towards loss of consortium, love and affection and also loss of estate and other heads. The Tribunal has wrongly held that the accident had occurred due to composite negligence without appreciating the evidence of the eye witness and without appreciating the fact that there is no rebuttal evidence by the Insurer. With the said contentions, learned counsel for the claimants sought for enhancement of compensation.

10. To prove that the accident had occurred due to the rash and negligent driving of the driver of the Mahendra Bolero vehicle bearing No.AP 29V 1527, the claimants have examined the 1st claimant as PW.1 and an eye-witness to the accident as PW.2 and filed Exs.A1-FIR and Ex.A2-charge sheet. To prove that the accident occurred due to the composite negligence of drivers of both the vehicles, the insurer did not examine any witness and did not file any document. The insurer examined its Assistant Manager as RW.1 and filed Ex.B1-policy.

11. It is the specific contention of the claimants that on 23.02.2010 at about 5.00 p.m., when the deceased Shaik Ahmad was proceeding on a motor cycle bearing No.AP 28S 9612 as pillion rider, from Nagole to SBH Colony, Hyderabad, slowly on the left side of the road. Shaik Munawar was riding the said vehicle. When they reached near Hyundai show room, Nagole, Mahendra Bolero Truck bearing No.AP 29 V 1527 driven by its driver in a rash and negligent manner coming in the same direction, dashed the motorcycle, as a result of

which the deceased and also the rider of the motorcycle sustained serious injuries.

12. Learned counsel for the claimants relied upon the principle held by the Apex Court in a judgment reported in **Bimla Devi v. Himachal Road Transport Corporation**² wherein the Apex Court observed that strict proof of accident caused by particular bus in a particular manner may not be possible to be done by the claimants; claimants were merely to establish their case on the touchstone of preponderance of probability; standard of proof beyond reasonable doubt could not have been applied and apparently there was no reason to falsely implicate the driver and conductor of the bus. By referring the same, learned counsel would contend that in the present case, the claimants have proved that the accident had occurred due to rash and negligent driving by the driver of Mahendra Bolero vehicle. Learned counsel further relied upon a judgment of the erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad in **Oriental Insurance Co. Ltd., v. Bhoomi Reddy Peddi Reddy Lakshmi Devi**³ wherein it was held that the determination of contents of FIR/charge sheet, evidentiary value of either contents of FIR or contents of charge sheet, may be a piece of evidence relevant for considering cause of accident along with other aspect, they by themselves cannot establish factum of accident occurred. Evidence of eye witness, who in fact was traveling

² 2009 ACJ 1725

³ 2011 (1) ALD 686 (DB)

along with the deceased at the material time, has to be given credence while deciding the issue as to how accident did in fact take place. By referring the same, learned counsel would contend that in the present case, the claimants have examined PW.2, eye witness to the accident, to prove the accident. He was the rider of the Motorcycle on which the deceased was traveling. Therefore, the claimants have proved that the accident had occurred due to rash and negligent driving by the driver of Mahendra Bolero vehicle.

13. PW.1 – wife of the deceased, admittedly, is not the eye witness of the accident. PW.2 is the eye witness of the accident. According to PW.2, he was riding the Hero Honda motorcycle and the deceased was sitting on the motorcycle as pillion rider. When they reached Hyundai car show room, the Mahendra Bolero vehicle bearing registration No.AP 29 V 1527 driven by its driver in a rash and negligent manner with high speed while proceeding in the same direction, suddenly applied brakes, and to avoid the impact, he took his Motorcycle towards right side and the driver of the Mahendra Bolero vehicle suddenly turned to right side and dashed to their motorcycle. Due to the said sudden impact, the deceased and PW.2 fell down from the motorcycle, and the deceased sustained fatal injuries and PW.2 sustained grievous injuries. The deceased died on 27.02.2010 due to the injuries sustained in the accident. In Ex.A1-FIR, the accident was narrated by brother of PW.2. In Ex.A2-charge sheet, the police mentioned that the investigation done by the police

revealed that the accident was occurred due to the rash and negligent driving of the driver of Mahendra Bolero vehicle bearing No.AP 29 V 1527. However, referring Ex.A1-FIR, learned counsel for the insurer would contend that the deceased was the rider of the motorcycle. Admittedly, Ex.A1 was registered on the complaint given by Shaik Mahimud, the brother of PW.2. PW.2 is the eye witness to the accident. Neither in Ex.A1-FIR nor Ex.A2-charge sheet, it is mentioned that the deceased was driving the motor cycle at the time of the accident. On the other hand, PW.2 in his chief examination deposed that he was rider and deceased was the pillion rider of the motor cycle. In fact, a suggestion was given to PW.2 during cross-examination with regard to rider of the motor cycle, to which PW.2 answered saying that he was the rider and deceased was pillion rider. Therefore, the contention of the insurer that the deceased was the rider of the motorcycle, cannot be accepted.

14. It is also relevant to note that in Ex.A1-FIR, it is mentioned by the police that PW.2 could not control the motorcycle. The Tribunal gave a finding that the averment in the report to the police by Shaik Mahimud that the deceased could not control the motorcycle, might be a mistake or without knowledge. Instead of stating that the rider of the motorcycle could not control the motorcycle, he might have stated that the deceased could not control the motorcycle and Ex.A3-Inquest report clearly shows that Shaik Ahmad was the pillion rider and two persons were on the motorcycle. During the cross

examination of PW.2, an eye witness to the accident and rider of the motorcycle, a suggestion was given to him that when he tried to overtake the said Mahendra Bolero vehicle, the accident was occurred. The Tribunal failed to consider the contents of Ex.A1-FIR properly. Ex.A1-FIR was registered on the complaint of brother of PW.2. It is specifically mentioned in Ex.A1-FIR by the complainant that his brother could not control the speed, the Truck dashed the motor cycle. The said finding of the Tribunal with regard to the accident in Ex.A1 report is erroneous. From the above discussion, including the evidence of PWs.1 and 2 and also on perusal of Exs.A1 and A2, it is evident that when the deceased and PW.2 were proceeding on Hero Honda motorcycle, Mahendra Bolero vehicle bearing registration No.AP 29 V 1527 came in the very same direction and when the driver of the said Mahendra Bolero vehicle applied sudden brakes, PW.2 took the motorcycle to the right side to avoid impact, and then suddenly the driver of the Mahendra Bolero vehicle turned his vehicle to the right side and dashed the motorcycle of PW.2. Due to the sudden impact, PW.2 and the deceased fell down from the motorcycle and the deceased sustained fatal injuries. Therefore, from the above said discussion and the evidence of PW.2, it can be safely held that PW.2 is the rider of the motorcycle and the deceased was the pillion rider and that the Mahendra Bolero vehicle dashed the motorcycle, due to which the deceased and PW.2 fell down and sustained injuries.

15. The insurer failed to examine any witness to prove that there is contributory negligence or composite negligence. Except examining its Assistant Manager, the Insurer did not examine any witness and did not file any document. The insurer failed to elicit anything contra from PW.2 – eye witness to the accident, during cross-examination. Therefore, in the absence of any evidence, much less convincing evidence, it can be safely held that the accident was due to the rash and negligent driving of the driver of Mahendra Bolero vehicle bearing registration No.AP 29 V 1527. It is relevant to note that both the vehicles are going in the very same direction. According to PW.2, rider of the motorcycle, the above said Mahendra Bolero vehicle came from the very same direction in which the Motorcycle is proceeding and dashed the motorcycle. Therefore, the insurer failed to prove that there is either contributory or composite negligence on the part of the drivers of both the vehicles. In the absence of the same, the finding of the Tribunal that it is clear that there is negligence on the part of PW.2, who was riding the motorcycle also and therefore, there is composite negligence on the part of the rider of the motorcycle and also on the part of the driver of the Mahendra Bolero vehicle is erroneous. The said finding of the Tribunal is without any basis and contrary to record. Therefore, according to this Court the accident was occurred due to the rash and negligent driving of the driver of Mahendra Bolero vehicle bearing registration No.AP 29 V 1527.

16. However, learned counsel for the claimants would contend that even if it is composite negligence also, it is for the legal heirs of the deceased to claim compensation from the insurer of either of the vehicles. It is for the owner and insurer of the one vehicle to pay the compensation at the first place and claim the same from the owner and insurer of the other vehicle. In support of the same, he relied on the decisions of the Apex Court in **Khenyei v. New India Assurance Co. Ltd.**,⁴ and **T.O. Anthony v. Karvarnan**⁵, wherein the Hon'ble Apex Court categorically held that in case of composite negligence the claimants can claim the compensation from the owner and insurer of both the vehicles or anyone of them.

17. By referring the principle held in the above said judgments, learned counsel for the claimants would contend that choice is of the legal heirs of the deceased to claim compensation from the owner and insurer of either of the vehicles. He would further contend that there is no negligence on the part of the driver of the Hero Honda Motorcycle and even then accepting the finding of the Tribunal that there is composite negligence, still, the claimants – legal heirs of the deceased can claim compensation from the insurer of the said Mahendra Bolero vehicle bearing registration No.AP 29 V 1527.

18. In the present case, as discussed supra, the insurer failed to establish that the accident occurred due to rash and negligent driving

⁴ 2015 ACJ 1441

⁵ 2008 ACJ 1165

of the rider of the Hero Honda Motorcycle and there is composite negligence on the part of the rider of the motorcycle and hence, the insurer is liable to pay compensation to the claimants.

19. Viewed from any angle, it is the insurer of the Mahendra Bolero vehicle to pay the compensation to the legal heirs of the deceased, claimants herein. It is relevant to note that before the Tribunal, the insurer herein filed an application under Section 170 of the Motor Vehicles Act vide I.A. No.492 of 2013 and the same was allowed on 10.10.2013 whereby the insurer was authorized to take all the defences that are available to the owner of the offending vehicle. Despite the said order, as discussed supra, the insurer failed to prove that the accident had occurred due to the composite negligence of the drivers of both the vehicles.

20. The insurer filed counter before the Tribunal in the OP and they have not taken any specific plea of either composite negligence or contributory negligence. It has contended that the owner and insurer of the Hero Honda Motorcycle are necessary parties and the driver of the vehicle was not having valid driving license. Except the said general contentions, the insurer did not take any specific contention with regard to either contributory negligence or composite negligence. In the absence of the same and in view of the fact that the insurer failed to plead and prove the contributory negligence or composite negligence, the contention of the insurer that the accident

had occurred due to composite negligence of the drivers of both the vehicles, cannot be accepted.

21. Coming to the quantum of compensation, it is the specific contention of the claimants that the deceased was aged 32 years as on the date of accident. However, they have filed Ex.A13 - passport of the deceased to show that he was aged 32 years as on the date of accident. The insurer failed to disprove Ex.A13 or the age of the deceased as 32 years. In the absence of the same, the age of the deceased can be considered as 32 years. It is the specific contention of the claimants that the deceased was working as Hydraulic Mechanic in M/s.Dynamic Hydro Services, New Nagole, Hyderabad and he was getting consolidated salary of Rs.15,000/- per month. To prove the same, the claimants have filed Ex.A14 – salary certificate of the deceased, issued by the said firm. The claimants have not examined the author of Ex.A14. They have not examined any other witness in proof of Ex.A14 - salary certificate. In Ex.A.14, the designation of the deceased was not mentioned. The claimants have not filed any registers much less statutory registers, such as, attendance register and the accounts register from the said Dynamic Hydro Services. They have not taken any steps to call for the said statutory registers from the said firm and not summoned any witness to prove Ex.A14 – salary certificate. However, disbelieving Ex.A14 – salary certificate, the Tribunal has considered the monthly earning

capacity of the deceased as Rs.4,500/- treating that the deceased was a labourer, as mentioned in Ex.A3 – Inquest report.

22. Learned counsel for the claimants would contend that the Hon'ble Apex Court in **Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited**⁶, where the accident was of the year 2004, considered the monthly earning capacity of a coolie as Rs.4,500 and in **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited**⁷ where the deceased was a vegetable vendor, considered the monthly earning capacity as Rs.6,500/-. In the present case, the accident is of 2010. It is the specific contention of the claimants that the deceased used to work as Hydraulic Mechanic. They have filed Ex.A14-salary certificate of the deceased. However, they have not examined the author of Ex.A14. Exs.A15 to A18 are bonafide certificates of classes II, III, VI and VII of the deceased issued by the School. It is relevant to note that the Motor vehicle Act is a beneficial legislation and the benefit should be given to the claimants to whose benefit the Act was brought in by the Legislature. Where two views are possible, the view, which is beneficial to the claimants, shall be taken. It is also a settled principle of law that the claimants need not prove the monthly earning capacity of the deceased by producing all the statutory registers. Normally, they will not be in a position to get any evidence

⁶ (2011) 13 SCC 236

⁷ (2014) 2 SCC 735

to prove the same. Therefore, considering all these aspects and also the aspect that the accident is of 2010 and Ex.A14-salary certificate, according to this Court an amount of Rs.6,000/- can be considered as the monthly earning capacity of the deceased.

23. As discussed supra, the age of the deceased was 32 years at the time of accident and the appropriate multiplier for the said age is '16' as per the principle in **Sarla Verma's** case (1 supra). The Tribunal has rightly applied the multiplier '16'. The Tribunal has deducted $1/5^{\text{th}}$ of the salary of the deceased towards his personal expenses. But, as per the principle in **Sarla Verma's** case (1 supra), in case there are 4 to 6 dependants, $1/4^{\text{th}}$ of the income of the deceased has to be deducted towards his personal expenses. In the present case, there are five dependants on the deceased. Therefore, $1/4^{\text{th}}$ of income of the deceased has to be deducted towards his personal expenses. As stated supra, the monthly income of the deceased is considered as Rs.6,000/-. After applying the multiplier 16, the annual income of the deceased comes to Rs.11,52,000/- (Rs.6,000/- x 12 x 16). After deducting $1/4^{\text{th}}$ from Rs.11,52,000/-, the actual income of the deceased to which the claimants are entitled under the head of loss of dependency comes to Rs.8,64,000/- (Rs.11,52,000/- minus Rs.2,88,000/-).

24. An addition of 40% of the actual income of the deceased has to be awarded to the claimants towards future prospects as per the principle held by the Apex Court **National Insurance Company**

Limited v. Pranay Sethi⁸ since the deceased was aged below 40 years, and the same would work out to Rs.3,45,600/- (40% of Rs.8,64,000/-).

25. As per the principle held by the Apex Court **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram**⁹, the 1st claimant – wife, claimants 2 to 5 – children of the deceased are entitled for Rs.40,000/- each towards spousal and parental consortium, respectively.

26. As per the principle held by the Apex Court in **Pranay Sethi's** case (8 supra), the claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The claimants are further entitled to an amount of Rs.5,000/- towards transportation and Rs.1,000/- towards damage to clothes.

27. Thus, in all, the claimants are entitled to Rs.14,45,600/- (Rupees Fourteen lakhs forty five thousand and six hundred only) as compensation under the following heads:

i)	Loss of dependency/contribution to family	..	Rs.8,64,000/-
ii)	Future prospects to an extent of 40%	..	Rs.3,45,600/-
iii)	Spousal Consortium	..	Rs.40,000/-
iv)	Parental consortium	..	Rs.1,60,000/-
v)	Funeral expenses	..	Rs.15,000/-
vi)	Loss of estate	..	Rs.15,000/-

⁸. (2017) 16 SCC 680

⁹. (2018) 18 SCC 130

vii) Transportation	..	Rs.5,000/-
viii) Damage to clothes	..	Rs.1,000/-

Total compensation	..	Rs.14,45,600/-

28. In the result, the MACMA No.2486 of 2014 is dismissed and MACMA No.620 of 2019 is allowed in part. The order and decree dated 29.10.2013 in OP No.99 of 2011 passed by the I Additional Metropolitan Sessions Judge cum XV Additional Chief Judge, Hyderabad, are modified enhancing the compensation to Rs.14,45,600/- (Rupees Fourteen lakhs forty five thousand and six hundred only) from Rs.11,23,560/-(Rupees Eleven lakhs twenty three thousand five hundred and sixty only) with interest at 7.5% per annum thereon, from the date of petition till realization. The respondents in MACMA No.620 of 2016 i.e. owner and Insurer of the Mahendra Bolero vehicle bearing registration No.AP 29 V 1527 are jointly and severally liable to pay the said compensation. The compensation amount shall be apportioned among the claimants in the same proportion in which original compensation amounts were directed to be apportioned by the Tribunal. As far as loss of consortium amounts are concerned, the respective claimants alone are entitled to receive from out of the above said total compensation. The respondents in MACMA No.620 of 2019 i.e. owner and Insurer of the offending vehicle are directed to deposit the above said amount with interest and costs, after deducting the amount which was already deposited, within

one month from the date of receipt of certified copy of this judgment.

However, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeals shall stand closed.

K. LAKSHMAN, J

Date: 30.06.2020

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