THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 3134 of 2014 & 170 of 2015

COMMON JUDGMENT:

MACMA.No. 3134 of 2014 is preferred by the claimant before the Tribunal, assailing the order and decree of the Additional Chairman, Accidents Claims Tribunal-cum-XX Additional Chief Judge, City Civil Courts, Secunderabad made in O.P.No. 739 of 2011 dated 27.06.2014 on the ground of inadequacy of compensation. Whereas, MACMA No. 170 of 2015 is preferred by the Reliance General Insurance Company Limited, who is the respondent No. 2 before the Tribunal, assailing the very same order and decree on the ground that inasmuch as the driver of the offending vehicle had no valid driving licence to drive the offending vehicle as on the date of accident and since the owner of the offending vehicle i.e., respondent No.1 in the O.P. had violated the conditions of Ex.B.1 policy, the learned Tribunal ought not to have fastened liability upon the insurance company.

3. The facts of the case are that on 10.09.2011, while the claimant was proceeding on his motorcycle and when he reached near HMT Company, Jeedimetla, the driver of the offending vehicle i.e., Auto bearing No. AP 28TC 0359, owned by respondent No. 1 and insured with respondent No. 2, drove the

auto in rash and negligent manner with high speed, came in wrong direction and dashed the motorcycle. As a result, the claimant fell down and received multiple injuries. His right hand was amputated and he became permanently disabled. Therefore, he laid a claim for Rs.40.00 lakhs from the respondents towards compensation under different heads. While the owner of the auto remained ex parte, the insurance company contested the claim. Considering the claim and the counter filed by the Insurance Company and on evaluation of the evidence, both oral and documentary, the learned Tribunal has allowed the O.P. in part and awarded total compensation of Rs.24,29,000/- with 6% interest per annum, holding the owner of the offending vehicle jointly and severally liable to pay the compensation.

4. Heard both sides.

5. The learned counsel for the appellant-claimant in MACMA No. 3134 of 2014 contends that instead of restricting the compensation to Rs.24,29,000/-, the learned Tribunal ought to have awarded entire compensation of Rs.40.00 lakhs, as the claimant, who was aged about 28 years & earning Rs.20,000/- per month as Welder in BHEL, lost his job on account of amputation of his right hand. As seen from Ex.A.5, disability

certificate, and the evidence of P.W.2, doctor, the claimant had sustained 85% permanent disability and he is unable to do any job in future. That apart, the claimant has to lead his remaining life with the support of artificial limb, which needs to be changed from time to time. On the aspect of interest awarded by the Tribunal, the learned counsel submits that though the prevailing rate of interest at the particular point of time was 7.5%, the Tribunal has awarded only 6%, which is meager. Therefore, the learned counsel seeks enhancement of compensation awarded by the learned Tribunal.

6. On the other hand, the learned Sanding Counsel for the Insurance Company, with regard to the quantum of compensation, has contended that the Tribunal has adequately granted the compensation and the same needs no interference by this Court. His only contention, as pleaded in his appeal i.e., M.A.C.M.A. No. 170 of 2015, is that the auto of the respondent No. 1 was not involved in the alleged accident and as per MLC certificate, Ex.A.3, the claimant had sustained injuries in the accident caused by a car and therefore, it is clear that the auto was falsely implicated in the case in collusion with the owner. It is contended that as it is a head-on collision between two vehicles, the tribunal ought to have apportioned contributory negligence on the part of the claimant as well. Further, by

examining R.W.1, the insurance company has established that the driver of the offending vehicle was not holding valid driving license by the date of the accident and therefore, the respondent No. 1, owner of the auto, had violated the terms of the Ex.B.1-policy. In these circumstances, the Tribunal ought not to have fastened any liability upon the Insurance Company to pay the compensation and it is the respondent No. 1, owner, who alone is liable to pay the compensation to the claimant. Therefore, he seeks to set aside the order of the Tribunal to the extent of holding the Insurance Company jointly and severally liable to pay the compensation amount.

7. As regard the quantum of compensation, the claimant claimed that at the time of fatal accident, he was working as Welder in BHEL, a Unit under Government of India, and earning Rs.20,000/- per month, as reflected in Ex.A.13, salary certificate, which has been substantiated by the evidence of P.W.4, General Manager of BHEL. The medical evidence also establishes that the right hand of the claimant was amputated and there was 85% permanent disability as seen from Ex.A.5, disability certificate, which was substantiated by the evidence of P.W.2. Considering all these aspects, the tribunal has awarded a sum of Rs.24,29,000/- which is, in the opinion of this Court, is just and reasonable. Although it is contended by the learned

Standing Counsel for the Insurance Company that the quantum of compensation is on higher side, considering the fact that the claimant was 30 years, lost his job and has to lead his life with the support of artificial limb, this Court is not inclined to disturb the quantum of compensation awarded by the tribunal.

8. Coming to the appeal of the Insurance Company i.e., M.A.C.M.A. No. 170 of 2015, while dealing with the contention of the learned counsel for the Insurance Company that the auto in question was implicated falsely in the accident and in fact, it is a car that hit the claimant as seen from Ex.A.3, wherein it was recorded as the claimant sustained injuries in the accident by a car, the tribunal has rightly rejected the said contention, since there was no evidence as to who made such a statement before the medical authorities. Therefore, in the absence of any evidence in this regard, this Court is not inclined to interfere with the said findings. So also, basing on Exs.A.1 and A.2, coupled with the evidence of P.W.1, the tribunal has rightly rejected the contention of the Insurance Company that there was contributory negligence on the part of the claimant. Merely because it is a head-on collision, in the absence of any evidence adduced by the Insurance Company to show that there was contributory negligence on the part of the claimant in causing the accident, the tribunal was right in rejecting the said

contention. Lastly, coming to the contention of the learned Standing Counsel for the Insurance Company that the driver of the offending vehicle had no valid driving licence, and therefore, no liability can be fastened on the Insurance Company, it is to be seen that the owner of the auto remained ex parte. The Insurance Company got issued notice under Ex.B.2 to the owner and having received the same under Ex.B.3, the owner of the auto, did not turn up. Therefore, in these circumstances, it can be presumed that the driver of the offending vehicle was not having valid driving licence to drive the offending vehicle and thereby the owner, respondent No. 1 had violated the terms of the policy, Ex.B.1. But the fact remains that by the time of accident, the offending vehicle was insured with the appellant and Ex.B.1 policy was very much in force by the said date. In the case of third party risks, as per the decision in **National Insurance Company Ltd. v. Swaran Singh and others**[1], the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. In the said decision, the Apex Court considered the doctrine of "*pay and recover*" and examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving

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[1] (2004) 3 SCC 297

license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in case of **Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others**[2], following its earlier decision in **Swaran Singh** (supra), reiterated that *even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.* Therefore, the finding of the learned Tribunal in fixing the liability jointly and severally upon the insurance company is liable to be set aside. As regards the rate of interest awarded by the Tribunal, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**[3], the interest granted by the Tribunal @ 6% per annum is meager and the same is enhanced to 7.5% per annum on the awarded amount from the date of petition and on the enhanced amount from the date of the order of the tribunal, till the date of realization.

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[2] 2018 ACJ 2163

[3] 2013 ACJ 1403 = 2013 (4) ALT 35

10. In the result, MACMA No. 3134 of 2014 is partly allowed enhancing the rate of interest awarded by the tribunal from 6% to 7.5% on the awarded compensation amount, while confirming the quantum of compensation amount awarded by the tribunal. MACMA No. 170 of 2015 filed by the Insurance Company is partly allowed setting aside the finding of the learned Tribunal to the extent of fixing the liability jointly and severally upon the insurance company. However, following the doctrine '*pay and recover*', the appellant-Insurance Company is directed to pay the compensation amount to the claimant, in the first instance and thereafter recover the same from the owner of the offending vehicle i.e., the respondent No. 1 in the O.P. without initiating any separate proceedings. Time to deposit the amount, after giving due credit to the amount already deposited, is one month from the date of receipt of a copy of this order. No costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE G. SRI DEVI

June 17, 2022
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THE HON’BLE JUSTICE G. SRI DEVI

M.A.C.M.A. Nos. 3134 of 2014 & 170 of 2015

DATE: 17-06-2022