

THE HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A.No.3746 OF 2012

&

I.A.No.1 OF 2014

(CROSS OBJECTIONS (SR) No.24677 OF 2014)

COMMON JUDGMENT:

M.A.C.M.A.No.3746 of 2012 is filed by the insurance company assailing the order dated 26.09.2011 in M.VO.P.No.738 of 2007, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar (for short 'the Tribunal'), wherein the said claim application filed by the claimants under Section 166 of the Motor Vehicles Act was allowed, awarding compensation of Rs.3 lakhs with interest at 7.5% per annum from the date of petition till realization. Cross objections SR.No.24677 of 2014 are filed by the claimants seeking enhancement of compensation.

2. Heard the learned counsel for the appellant-insurance company and the learned counsel for the claimants-cross objectors. Perused the record.

3. The claimants filed the claim application seeking compensation of Rs.3 lakhs on account of death of the deceased Dasari Masamma, who died in a motor vehicle accident that occurred on 04.04.2007. Claimants 1 and 2 are the parents-in-law and claimants 3 and 4 are the sons of the deceased. According to them, on that day the deceased and some others was travelling in an auto bearing No.AP-22 AF/TR 872 at about 01:00 p.m., and when it was proceeding within the limits of Gangapur Village, the driver of the auto drove the auto in a rash and negligent manner. As a result of which, the auto turned turtle and the deceased died and the other inmates of the auto sustained injuries. A case was registered by Police, Jadcherla against the driver of the auto viz., A.Anjaneyulu for the offences under Sections 304-A and 337 IPC. It is pleaded by the claimants that the deceased was attending to agricultural labour work earning Rs.100/- per day.

4. On a consideration of the evidence available on record, the Tribunal held on issue No.1 that the accident occurred due to the rash and negligent driving of the auto by its driver. On issue No.2, the Tribunal held that the claimants are entitled for a total

compensation of Rs.3 lakhs. Accordingly, an award was passed for the said amount with interest at 7.5% per annum. Aggrieved thereby, the insurer preferred the present appeal. Not satisfied with the compensation granted by the Tribunal, the claimants filed cross objections seeking enhancement of compensation.

5. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the auto by its driver is not seriously challenged and even otherwise the evidence on record, particularly Exs.A-1 to A-6 established the rash and negligent driving on the part of the driver of the auto.

6. The contention of learned counsel for appellant-insurance company is twofold. Firstly, the auto was overloaded at the time of accident and thus it contributed for the cause of accident. In support of the said contention, the learned counsel has relied on the judgments of this court in **MOHD. RASHEED v. SUSHEELA AGARWAL AND ANR**¹ and **AGNURU JAYA RAMULU v. MOHD. AFZAL MIYAN**², wherein it was held that if the vehicle is carrying more than its seating capacity and if the

¹ 2006 ACJ 678

² 2006 ACJ 855

claimants failed to produce scene of offence panchanama prepared by the police, the contributory negligence has to be taken into consideration. But in the instant case, the Tribunal did not take the contributory negligence into consideration and fasten the liability solely on the driver of the auto. He further contends that the Tribunal, having observed that the insured/owner of the auto violated the terms and conditions of the policy, ought to have exonerated the insurance company or at least it could have invoked the principle of pay and recover.

7. Secondly, as per the charge sheet -Ex.A-6, the owner-cum-driver of the auto was charge sheeted also for the offence under Section 3 read with Section 181 of the Motor Vehicles Act for not holding valid driving licence; and as the owner-cum-driver was not having driving licence and committed breach of terms and conditions of the policy and in order to avoid the liability, the insured played fraud and implicated the driver, who was having licence and also adduced evidence to the said effect. The learned counsel for the insurance company prayed for setting aside the order of the Tribunal.

8. On issue No.1, the Tribunal observed at para 10 of the order as under:

“The plea taken by R-2 regarding the violation of the conditions of the policy is disproved by the evidence of R.W.1 who has stated categorically that the auto was driven by driver A.Anjaneyulu during the time of the accident and he was possessing valid driving licence to drive the crime auto. In the light of evidence given by P.W.2 and R.W.1 it is found that the accident dt: 4.4.07 which resulted the death of the deceased Dasari Masamma has taken place due to rash and negligent driving of the auto bearing No. AP-22/AF/TR-872 belonging to A.Anjaneyulu during the course of his employment under respondent No.1. Therefore, R.1 being the owner of the crime auto, he is held liable vicariously for the negligent act of his driver”.

Coming to the liability of R.2 is concerned the plea taken by R.2 regarding contravention of the conditions of the policy by R.1, by allowing the driver to drive the auto without possessing licence is found to be not proved. The evidence of R.W.1 that the crime auto was driven by Anjaneyulu, who was possessing licence is not concerned and no attempt is made to disprove the evidence given by R.W.1 in this regard”.

9. Inasmuch as the insurance company has not putforward any contrary evidence that the driver of the auto was not possessing any

valid licence at the time of accident, I do not find any merit in the contention raised by learned counsel for the insurance company. I also do not find any ground to interfere with the categorical finding arrived at by the Tribunal in this regard and to deviate from the same. Accordingly, the ground raised by the insurance company during the course of arguments is liable to be rejected and the same is, accordingly, rejected.

10. The contention raised by the insurance company with regard to breach of terms and conditions of the policy by the vehicle owner in allowing more passengers than permitted, learned Tribunal held at para 11 of the judgment as under:

“So far as the plea taken by the second respondent regarding violation of terms and conditions of the policy by the vehicle owner by allowing more passengers than the permitted capacity of the auto is concerned, the evidence given by the vehicle owner (R.W.1) reveals that (7) passengers were present in the auto, whereas according to Ex.B-2 registration extract of the crime vehicle the seating capacity of the crime auto is “4”. Whereas according to the first information report at the time of alleged incident (7) persons were travelling in the crime auto and this made the second respondent to take plea that the terms of the policy

were contravened as more passengers than the permitted capacity of the auto were carrying though permit was issued to carry (4) persons. Because of violation of permit conditions by R-1, the insurance company cannot be made liable to pay compensation to the petitioners. In reply to the plea R.2 taken in this regard, the learned counsel for the petitioner placed reliance on the judgment of our High Court reported in 2007 ACJ 2760 in the case "New India Assurance Co., Ltd., and Komma Venkateshwarlu (deid) through L.Rs and another wherein his Lordship Hon'ble Sri Justice D.S.R.Varma on referring the decision of the Supreme Court of India rendered in Swaran Singh's case has observed at para No.7 that:

"..so far as the second contention is concerned, it is again to be seen that this also is, admittedly, violation of terms and conditions of the policy. The policy was issued to the vehicle in question to carry only 6 passengers and in contravention of the said condition, the vehicle in question was carrying more number of passengers than the passengers prescribed. Therefore, the said action of the insured can be treated as violation of the terms and conditions of the policy. In such cases also, as held by the Apex Court in Swaran Singh's case, the insurer has to pay the compensation to the claimants initially and recover the same from the insured later".

11. The learned Tribunal further observed that the principle of law in the aforesaid two decisions can be made applicable to the facts of the MVOP also as in the given case policy was issued to

the vehicle in question to carry 4 persons, but in contravention of the said condition, the vehicle was carrying more number of passengers than the permitted capacity. However, it was held by the Tribunal that in view of the action of the vehicle owner in allowing more passengers than permitted in the vehicle registration certificate cannot be a ground to reject the claim of the claimants and, accordingly, held that insurance company is also liable to pay compensation to the petitioners jointly and severally along with the insured.

12. After the decision in **NATIONAL INSURANCE COMPANY LIMITED V. SWARAN SINGH AND OTHERS**³ and also in a catena of decisions, the Hon'ble Supreme Court has categorically stated that in case of violation of terms and conditions of the policy regarding overloading and the policy issued to the insured was still subsisting as on date of accident, still the insurance company cannot be totally exonerated from its liability and in such type of cases, the insurance company has to pay the compensation to the claimants at the first instance and to recover the same from the

³ AIR 2005 SC 2850

insured later, but in the same proceedings and not by initiating any separate proceedings. To this extent, the finding of the Tribunal that the insurance company is also held liable to pay compensation to the claimants jointly and severally along with owner of the vehicle is liable to be set aside and is, accordingly, set aside.

13. Regarding the quantum of compensation, the Tribunal after taking into consideration of the judgments referred in the order has rightly taken the income of the deceased at Rs.3,000/- per month and Rs.36,000/- per annum. After deducting one-fourth towards personal expenses, estimated the contribution of the deceased to the family at Rs.27,000/- (Rs.36,000 x 1/4). However, the Tribunal at para 16 of the judgment observed that in the inquest report and post mortem report, the aged of the deceased is mentioned as approximately 30 years, but, however, considered that the deceased might be in the age group of 31 to 35 years. By applying the multiplier '16', assessed the loss of dependency at Rs.4,32,000/- (Rs.27,000/- x 16). According to the judgment of the Apex Court in **SARLA VARMA v. DELHI TRANSPORT**

CORPORATION⁴, for the person aged 30 years, the appropriate multiplier applicable would be '17'. The Tribunal ought to have applied the multiplier '17', instead of '16'. If the same is applied, it comes to Rs.4,59,000/- (Rs.27,000/- x 17). Subsequently, according to the judgment of the Apex court in **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI**⁵, the claimants are entitled to Rs.77,000/- towards conventional heads. Thus, the claimants are entitled for a total compensation of Rs.5,36,000/- (Rs.4,59,000/- plus Rs.77,000/-). At this stage, the contention of learned counsel for the insurance company is that the claimants have claimed an amount of Rs.3 lakhs towards compensation and the Tribunal has awarded the said amount and now the claimants are not entitled for the excess compensation now granted which has not been claimed.

14. However, in **LAXMAN @ LAXMAN MOURYA v. DIVISIONAL MANAGER, ORIENTAL INSURANCE COMPANY LIMITED AND ANOTHER**⁶, the Apex Court while

⁴ 2009(6) SCC 121

⁵ 2017 ACJ 2700

⁶ (2011) 10 SCC 756

referring to **NAGAPPA v. GURUDAYAL SINGH**⁷ held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

15. In view of the judgments of the Apex Court referred to above, the claimants are entitled to get more amount than what has been claimed. Further, the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

16. In the result, the M.A.C.M.A.No.3746 of 2012 is allowed-in-part. The appellant-insurance company is directed to pay the compensation amount along with proportionate interest and costs to the claimants at the first instance and later recover the same from

⁷ 2003 ACJ 12 (SC)

owner of the offending vehicle in the same proceedings, and not by initiating separate proceedings.

17. The cross objections filed by the claimants is allowed by enhancing the compensation from Rs.3 lakhs to Rs.5,36,000/- with proportionate costs and interest. The enhanced amount shall carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization. The enhanced amount shall be apportioned among the claimants in the same proportion in which original compensation amounts were directed by the Tribunal. The claimants are directed to pay deficit court fee on the enhanced amount. The said amount shall be deposited by the insurance company within a period of two months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

18. Pending miscellaneous applications, if any, shall stand closed.

JUSTICE G.SRI DEVI

Date: 21.02.2022
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