THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

M.A.C.M.A.Nos.2353 of 2016 and 1474 of 2017

COMMON JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

Since the facts of the case, the issues involved and the order under challenge in both these appeals are similar, both these appeals are being disposed of by this common judgment.

2. MACMA No.2353 of 2016 is filed by the appellant/Reliance General Insurance Company, and MACMA No.1474 of 2017 is filed by the appellants/owner and driver of the offending vehicle, under Section 173 of the Motor Vehicles Act, 1988, challenging the order and decree, dated 26.04.2016, passed in M.V.O.P.No.9 of 2013 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak, Sangareddy ('the Tribunal' for brevity).

3. Heard both sides and perused the record. The parties are hereinafter, referred to as they were arrayed in the subject MVOP No.9 of 2013 before the Tribunal.

4. The facts of the case, in brief, are that on 01.10.2012 at 12.50 hours, while the deceased-Sangannagari Srinivas was

proceeding on his Hero Honda Motor Cycle bearing No.AP-28-AW-445 from his office, i.e., Ordinance Factory towards bank side and when he was in between ODF circle and Main gate, in the meantime, one car bearing No.AP-09-VJ-TR-0149, being driven by its driver in a rash and negligent manner, came in opposite direction and dashed against the motorcycle of the deceased. As a result, the deceased received grievous injuries over his head and other parts of the body. Immediately, he was shifted to ODF Hospital and thereafter, he was referred to Prime Hospital, Kukatpally, Hyderabad, where, he succumbed to injuries on the same day night at about 09.10 hours.

5. The claimants preferred the subject MVOP before the Tribunal, claiming compensation of Rs.60,00,000/- on account of the death of the deceased. The Tribunal, after adverting to the matter in detail, allowed the MVOP, vide the impugned order, dated 26.04.2016, granting compensation of Rs.60,00,000/- along with costs and interest thereon at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation, with a direction that the entire amount shall be deposited in the Tribunal within thirty days from the date of the Award and on such deposit, respondent No.2/insurance

company is at liberty to recover the same from respondent Nos.1 and 4, without filing any separate proceedings. The Tribunal also apportioned the compensation among the claimants and respondent No.3 therein, i.e., mother of the deceased.

6. As seen from the impugned order, dated 26.04.2016, the Tribunal directed the respondent No.2/Insurance Company to pay the aforesaid compensation amount along with costs and interest at the first instance, and then recover the same from the respondent Nos.1 and 4, who are said to be the owner and driver of the crime vehicle, i.e., car bearing No.AP-09-VJ-TR-0149. Aggrieved by tagging of the liability against the respondent No.2/Insurance Company, it preferred MACMA No.2353 of 2016 to exonerate it from paying the compensation awarded by the Tribunal; and the respondent Nos.1 and 4 preferred MACMA No.1474 of 2017, aggrieved by the direction of the Tribunal to recover the compensation from them after depositing the compensation before the Tribunal.

7. Learned counsel for the respondent No.2/Insurance Company would contend that the driver of the crime vehicle, i.e., respondent No.4 was not holding any licence, even learners

licence, to drive light motor vehicle. The owner of the crime vehicle (respondent No.1) knowingly entrusted the crime vehicle to the respondent No.4 and the respondent No.4 caused the subject accident on 01.10.2012 and the deceased died in the said accident. As the respondent No.1-owner entrusted the crime vehicle to the respondent No.4 knowingly that she was not possessing driving licence, the Tribunal ought not have tagged liability on the insurance company and ought to have exonerated the insurance company from paying compensation to the claimants and respondent No.3. It is further contended that even the direction to pay the compensation at the first instance and thereafter recover the same from respondent Nos.1 and 4 is also unsustainable and ultimately prayed to allow MACMA No.2353 of 2016 as prayed for.

8. Learned counsel for the respondent Nos.1 and 4 would contend that a criminal case was registered against the respondent Nos.1 and 4 with regard to the subject accident vide C.C.No.967 of 2012 on the file of Additional Judicial Magistrate of First Class, Sangareddy, for the offences under Sections 304A and 447 of IPC, wherein, the learned Magistrate acquitted respondent No.4 for the said offences *vide* judgment dated

13.05.2014. There is no evidence at all to substantiate that the respondent No.4 was driving the offending vehicle at the time of accident. Furthermore, respondent No.1-owner of the offending vehicle was set *ex parte* on 07.10.2014, during the pendency of the subject OP. At a belated stage, respondent No.4 was brought on record as per order, dated 03.02.2016, passed in I.A.No.676 of 2015. In view of the acquittal of respondent No.4 in the Calendar Case registered against her in relation to the subject accident, it is clear that the respondent No.4 was not driving the offending vehicle at the time of subject accident. Without there being any evidence to substantiate that the owner of the vehicle had violated the terms and conditions of Ex.B1 policy, the Court below erroneously held that the insurance company is liable to recover the compensation from the respondent Nos.1 to 4 after satisfying the decree at the first instance and ultimately prayed to allow MACMA No.1474 of 2017 by exonerating the respondent Nos.1 and 4 from paying any compensation.

9. The first question that needs answer is whether there was violation of conditions of Ex.B1-insurance policy. The material placed on record reveals that the respondent No.4 neither got

into witness box and gave evidence nor any person was examined on her behalf to substantiate that she was not driving the offending vehicle at the time of the subject accident. Furthermore, respondent No.1-owner of the offending vehicle also did not get into the witness box and did not say as to who was driving the offending vehicle at the time of accident. There is oral evidence of P.Ws.1 to 3 and documentary evidence, i.e., Ex.A1-certified copy of FIR, Ex.A2-certified copy of charge sheet, Ex.A3-certified copy of scene of offence panchanama with sketch, Ex.A4-certified copy of PME report and Ex.A5-certified copy of MVI report, which shows that there were no defects in the offending vehicle. Ex.A6-salary certificate of the deceased and Ex.A7-Biodata form have no much relevance to determine the question with regard to violation of conditions of Ex.B1-insurance policy. The evidence adduced on behalf of the claimants and the documents marked clearly demonstrate that the respondent No.4 was driving the crime vehicle at the time of the subject accident. Further, there is also evidence of RWs.1 and 2 to substantiate that respondent No.4 had driven the offending vehicle, without holding any licence, even learners licence, to drive light motor vehicle at the time of subject accident i.e., on 01.10.2012. As regards the contention advanced on behalf of the respondent Nos.1 and 4 that respondent No.4 was acquitted in the criminal case registered in relation to the subject accident, in view of the overwhelming evidence on record, no reliance can be placed over the acquittal recorded in favour of respondent No.4 in the said criminal case. The procedure envisaged to grant compensation in the Motor Vehicles Act is a summary procedure. The standard of proof in civil proceedings is completely different from that of criminal proceedings. Civil cases are decided on the basis of preponderance of probabilities, while in a criminal case, the entire burden lies on the prosecution to prove its case beyond reasonable doubt. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. Therefore, basing on the acquittal recorded in favour of respondent No.4 in the criminal case registered against her with regard to the subject accident, it cannot be held that the vehicle bearing No.AP-09-VJ-TR-0149 causing the subject accident and death remained unproved. Further, this Court, in **New India**

Assurance Company Limited v. Katika Giridhar Rao and another[1], relied by the Tribunal, held as follows:-

> "depending upon facts and circumstances of each case, direction can be given to insurer to pay compensation to the claimant, who has a statutory right to recover compensation from insured despite the finding that insurer is not liable due to breach of terms of policy by insured on account of driver of vehicle "not possessing effective licence" or "any licence" at all and recover the said amount from the insured".

Further, as seen from the material placed on record, the liability of respondent Nos.1 and 4 is joint and several. Recently, the Apex Court, in a recent decision in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**[2], directed the insurance company to satisfy the award at the first instance and then recover the same from the insured in the very same proceedings before the Tribunal. In view of the benevolence object of the Motor Vehicles Act, the Insurance Company is liable to pay the compensation to the claimants at the first instance and then recover the same from the owner of the offending vehicle by invoking the principle "pay and recover" as laid down by the Apex Court in **Manuara Khatun's** case (2 *supra*). Hence, the direction of the Court below to that effect cannot be faulted. The contentions raised before this Court that

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[1] 2014(3) ALT 203
[2] 2017 ACJ 1031

respondent No.1 was set *ex parte* on 07.10.2014 and at a belated stage, respondent No.4 is brought on record, would not have prevented respondent Nos.1 and 4 to lead evidence and substantiate their submissions. As regards the submission that the respondent No.4 was not the driver of the crime vehicle and the same was belatedly invented in order to exonerate her from the liability, absolutely there is no evidence on record to show that the subject crime vehicle was not driven by respondent No.4 at the time of the subject accident. Further, as held above, the respondent No.4 was not having any valid licence to drive the subject crime vehicle or even the learner's licence.

10. Learned counsel for the Insurance Company contended that the compensation granted by the Tribunal is exorbitant and that without there being any oral and documentary evidence available on record, such exorbitant compensation was granted by the Tribunal. As seen from the age of the deceased, his occupation and monthly income, the Tribunal adopted the correct multiplier and awarded just and reasonable compensation towards loss of contribution. Further, the Tribunal granted just and reasonable compensation under the other conventional heads viz., loss of consortium, loss of care and

guidance and funeral expenses. The findings recorded by the Tribunal are in tune with the evidence on record and there is nothing to vary the same.

11. In view of the above discussion, the findings recorded and the conclusions reached by the Tribunal are in tune with the facts and law. There are no circumstances to interfere with the same. Both the appeals lack merit and are liable to be dismissed.

12. Accordingly, both the appeals are dismissed. It is made clear that the respondent No.2/insurance company need not initiate separate proceedings. It can execute the order after complying the condition of payment of compensation as ordered by the Court below.

Miscellaneous Petitions, if any, pending in these appeals, shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

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NAGESH BHEEMAPAKA, J

Date: 18.10.2022
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