

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY ,THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 336 OF 2017

Appeal Under Section of Motor Vehicles Act against the order and decree in O.P. No. 906 of 2010 dated: 06-06-2010, on the file of the Court of the Chairman Motor Accident Claims Tribunal-Cum-I Additional District Judge, Nalgonda.

Between:

ICICI Lombard General Insurance Company Ltd., Br.Office, 4th Floor, Osman Plaza, Opposite HSBC Road No.1, Banjara Hills, Hyderabad.

(Policy Cover Note No.8518631 valid from 31-12-2009 to 30-12-2010)

...APPELLANT/RESPONDENT NO.2

AND

1. Vallapudasu Neelamma, , W/o Mallaiah, age:37 years, Occ: Household
2. Vallapudasu Nagalaxmi, D/o.Mallaiah, age:20 years, Occ: Student
3. Valapudasu Vishalandra, D/o: Mallaiah, age 18 years, Occ: Student.
4. Vallapudas Malleshwari, D/o.Mallaiah, age:16 years, Occ: Student

The petitioners No.3 and 4 being minors rep.by their natural mother, the Petitioner No.1 herein.

All are R/o Vardhapuram village of Mattampalli Mandal, Nalgonda District. Presently R/o Ramnagar, Nalgonda Town.

5. Ayyappa Swamy Nandipati, S/o.Sathyanarayana, R/o.D.No.4-82, Old Water Tank, Ibrahimpatnam village and Mandal, Krishna District. Owner of the Lorry No.AP-16-TU-9738

...RESPONDENTS/PETITIONERS

I.A. NO: 2 OF 2016(MACMAMP. NO: 5868 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased stay of execution of the decree and all further proceedings in OP. No. 906/2010 dated:06.06.2016, on the file of The Chairman, Motor Accident Claims Tribunal cum I Addl.District Judge, Nalgonda.

Counsel for the Appellant: SRI. N MOHAN KRISHNA

Counsel for the Respondent No. 1 to 4: SRI. CHALAKANI VENKAT YADAV

Counsel for the Respondent No.5: SRI. PRABHU NATH VASIREDDY

The Court Delivered the following: JUDGMENT

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 336 of 2017

JUDGMENT:

Being dissatisfied with the order and decree passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda District in O.P. No.906 of 2010 dated 06.06.2010, the present appeal is filed by the appellant-ICICI Lombard General Insurance Company Ltd.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. According to the petitioners, on 29.10.2010 the deceased-Mallaiah was proceeding on his motorcycle bearing No. AP 27 D 4905 from Huzurnagar to his village and on the way when he reached Bakkamanthulagudem Village at about 6:30 P.M hours, a lorry bearing No. AP 16 TU 9738 came in a rash and negligent manner at high speed in opposite direction and dashed the motorcycle. Due to which the deceased sustained grievous injuries and died instantaneously. Thus, the petitioners are claiming compensation of

Rs.5,00,000/- against the respondent Nos.1 and 2, who are owner and insurer of the lorry jointly and severally liable to pay compensation.

4. Respondent No.1 remained exparte.

5. Respondent No.2 filed counter disputing the manner in which the accident occurred, age, avocation, income and health condition of the deceased. It is further contended that the claim is highly excessive, no merits in the petition and sought for dismissal of the case.

6. In view of the above pleadings, the Tribunal raised the following issues:

- 1) *Whether the deceased by name Vallapudasu Mallaiah died due negligent driving of the driver of the lorry bearing No. AP 16 TU 9738?*
- 2) *Whether the claimants are entitled for compensation, if so, to what amount and from whom?*
- 3) *To what relief?*

7. In order to prove the issues, on behalf of the petitioners, PWs.1 and 2 were examined and got marked Exs.A-1 to A-6. On behalf of respondents, RW.1 was examined and Ex.B1 and B 2 were marked.

8. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.4,65,000/- towards compensation to the claimants along with proportionate costs and interest @ 7.5% per annum from the date of petition till realization against the respondent Nos.1 and 2 jointly and severally.

9. Heard the learned Standing Counsel for the appellant-Insurance Company and the learned Counsel for the respondent Nos.1 to 4/ claimants. Perused the material available on record.

10. The learned Standing Counsel for the appellant-Insurance Company submitted that the Tribunal failed to see that the cover note bearing No. GJ8518631 does not pertain to the crime lorry but it belongs to another vehicle which is not involved in the accident and the Tribunal failed to see that the date of accident is 29.1.2010 and the policy is valid from 18.2.2010, which is 20 days after the date of accident and that the Tribunal failed to see that on the date of accident, there was no policy existing to the offending vehicle. It is further submitted that the amount awarded by the Tribunal is highly

excessive. Accordingly, prayed for setting aside the impugned order in the O.P.

11. The learned Counsel appearing on behalf of respondent Nos.1 to 4-claimants submitted that the Tribunal after considering the oral and documentary evidence available on record, has awarded reasonable compensation against both the respondents jointly and severally and the same needs no interference by this Court. Therefore, the learned counsel sought for dismissal of the appeal.

12. With regard to the manner of accident, there is no dispute. However, after evaluating the evidence of PWs.1 and 2 coupled with the documentary evidence available on record, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

13. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased was an agriculturist, aged 40 years and used to earn Rs.5,000/- per month. However, since there is no income proof, the Tribunal had rightly taken the income of the deceased at Rs.3,000/- per month and by deducting 1/4th towards

personal and living expenses of the deceased who is having four dependants, applied the relevant multiplier and awarded an amount of Rs.4,05,000/- towards loss of dependency. Further the Tribunal awarded an amount of Rs.40,000/- towards loss of estate, love and affection, Rs.10,000/- towards consortium and Rs.10,000/- towards funeral expenses and in total, the Tribunal awarded an amount of Rs.4,65,000/-, which is just and reasonable.

14. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the offending vehicle by its driver. Learned Standing Counsel for the respondent No.2- Insurance Company submitted that there is no policy to the offending lorry as on the date of accident, however, admitted in their counter that they have issued policy to the crime lorry bearing No. AP.16.TU.9738 covering the period from 18.2.2010 to 17.2.2011 to the respondent No.1 herein. The accident occurred on 29.01.2010. In support of their contention, their Legal Manager was examined as RW-1 and he narrated the same in their additional counter. He further stated that they searched for the policy of the said vehicle and found that the cover note No.GJ8518631 was issued to vehicle bearing No.

AP.05.W.7877 and the respondent No.1 herein purchased policy from their company on 18.2.2010 and as the policy was purchased subsequent to the accident, their company is not liable to pay compensation to the petitioners. Both the said policies were marked as Exs.B1 and B2. However, RW.1 in his cross-examination stated that they have agents present at the outlets and also in the office in order to collect the premiums and the agent gives cover note at the first instance on collection of the premium amount and on depositing the amount in the office by the agent, who collected premium at the office, the policy will be issued. The validity period of the cover note is 60 days. He did not specify the permissible period for the agents to deposit the amount at the office, which was collected by them at the outlets. He also admitted that the Xerox copy of the said cover note shown to him seems to be alike one issued from their office and number of cover note mentioned is GJ8518631 and it was issued for the crime vehicle and the validity is from 31.12.2009 to 30.10.2010. The original cover note will be with the respondent No.1 but after receiving the summons, he did not appear before the Court to challenge the case of the petitioners and did not put forth any evidence stating that the cover note was issued to him even before the date of

accident by the agent, who has collected premium of Rs.19,500-00. When the actual person has failed to contest the case, there is no other option to the petitioner except to file the copy of cover note which is available with him. Further respondent No.2 did not take any steps to examine the agent to prove that the said cover note was issued in favour of respondent No.1. Even the respondent No.2 failed to speak about the mode of payment of premium and on what date it is paid and to whom it was paid. Considering the above facts and circumstances, the Tribunal rightly fixed the liability against the respondent Nos.1 and 2 jointly and severally. Therefore, in view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

15. In the result, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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MOHD ISMAIL
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Chairman, M.A.C.T.-Cum-I Additional District Judge, Nalgonda (With Record if any)
2. One CC to Sri. N Mohan Krishna, Advocate [OPUC]
3. One CC to Sri. Chalakani Venkat Yadav, Advocate [OPUC]
4. One CC to Sri. Prabhu Nath Vasireddy, Advocate [OPUC]
5. Two CD Copies

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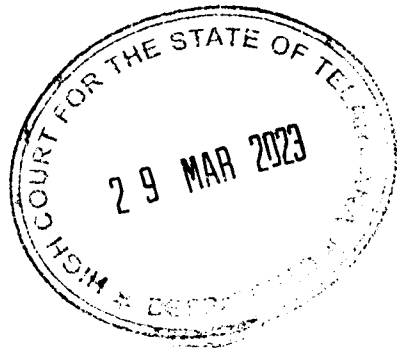


HIGH COURT

DATED:30/12/2022

JUDGMENT

MACMA.No.336 of 2017



**DISMISSING THE MACMA
WITHOUT COSTS.**

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MA
15/3/23

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AT HYDERABAD**

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PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

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Appeal Under Section of Motor Vehicles Act against the order and decree in O.P. No. 906 of 2010 dated: 06-06-2010, on the file of the Court of the Chairman Motor Accident Claims Tribunal-Cum-I Additional District Judge, Nalgonda.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in

the case and upon hearing the arguments of Sri. N.MOHAN KRISHNA, Advocate for the Appellant and Sri. CHALAKANI VENKAT YADAV, Advocate for the Respondent No.5.

This Court doth Order and Decree as Follows:

1. That the Motor Accident Civil Miscellaneous Appeal be and hereby is dismissed; and
2. That there be no order as to costs in this appeal.

SD/- MOHD ISMAIL
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Chairman, M.A.C.T.-Cum-I Additional District Judge, Nalgonda (With Record if any}
2. Two CD Copies

T J



HIGH COURT

DATED:30/12/2022

DECREE

MACMA.No.336 of 2017

**DISMISSING THE MACMA
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