THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. Nos.1860 of 2011 and 2187 of 2013

COMMON JUDGMENT:

As these appeals are arising out of the common judgment in O.P.No.1787 of 2007, they are disposed of together by this common judgment.

2. M.A.C.M.A.No.1860 of 2011 is filed by the claimants seeking enhancement of compensation from Rs.4,03,000/- awarded by the Tribunal to Rs.6,00,000/- as claimed by them. M.A.C.M.A. No.2187 of 2013 is filed by the insurance company contending that the compensation of Rs.4,03,000/- awarded by the Tribunal was excess and was liable to be set aside.

3. The parties are hereinafter referred to as they were arrayed before the Tribunal in O.P.No.1787 of 2007.

3. The facts of the case in brief are that, on 05.06.2007 at about 8:30 P.M., while the deceased was proceeding as a pillion rider on a TVS motor cycle bearing No.AP28AS7061 driven by his brother-in-law, Mallesh along with another pillion rider from Anna Nagar to

Ambedkar Nagar, the rider of a Hero Honda motor cycle bearing registration No.AP09FL T/R 2247 coming in opposite direction, hit the TVS motor cycle, in a rash and negligent manner, due to which three persons on the TVS motor cycle fell down and sustained injuries, and they were shifted to Gandhi Hospital, Secunderabad. The duty doctor of Gandhi Hospital declared him as brought dead.

4. The Begumpet Police registered a case against the rider of the offending motor cycle bearing No. AP09FL T/R 2247 *vide* Crime No. 327 of 2007 under Sections 304-A and 337 of IPC.

5. The wife and children of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "*the Act*") claiming compensation of Rs.6,00,000/- from respondent Nos.1 and 2, the owner and insurer of the Hero Honda motor cycle.

6. The respondent No.1, the owner of the motor cycle remained Ex-parte. The respondent No.2, insurance company filed counter by taking all the defences available to the respondent No.1 contending that

the rider of the TVS motor cycle was not having subsisting driving licence and called for strict proof of the other petition averments.

7. Before the Tribunal, the petitioner/claimant No.4 was examined as PW.1 and the rider of the TVS motor cycle, the brother-in-law of the deceased was examined as PW.2 and Exs.A1 to A7 were marked on behalf of the petitioners. On behalf of the respondents, the insurance company got examined its Legal Manager as RW1 and got marked Exs.B1 to B3.

8. On considering the oral and documentary evidence on record, the Tribunal rejected the plea of contributory negligence due to triple riding and also rejected the plea of the insurance company with regard to the rider of the TVS motor cycle not having driving licence, as no rebuttal evidence was adduced by the insurance company to prove the said contentions.

9. The Tribunal considered the income of the deceased as Rs.3,000/- per month on a guess work, accepting the occupation of the deceased as Mason, as was evident from Ex.A3 inquest panchanama but no proof of income of the deceased was filed by the claimants. The

Tribunal on deducting 1/3rd of his income towards personal expenses, awarded compensation under various heads as follows:

Loss of dependancy	Rs.3,12,000/-
Loss of consortium	Rs. 15,000/-
Loss of estate	Rs. 50,000/-
Loss of love & affection	Rs. 20,000/-
Transportation charges	Rs. 3,000/-
Funeral Expenditure	Rs. 3,000/-
TOTAL	**Rs.4,03,000/-**

10. The Tribunal awarded the said amount with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit against the respondent Nos.1 and 2 jointly and severally.

11. Aggrieved by such an award, the claimants preferred M.A.C.M.A. No.1860 of 2011 contending that the Chairman, M.A.C.T. had wrongly taken the earning of the deceased on the lower side, the contribution by the deceased to the claimants on lower side, the age of the deceased on higher side, the multiplier on the lower side and awarded less compensation towards loss of consortium, towards loss of estate, towards loss of love and affection and towards transportation charges and funeral expenses and granted less rate of interest and prayed to allow the appeal.

12. The respondent No.2 insurance company filed M.A.C.M.A. No.2187 of 2013 contending that the petitioner who was travelling as a pillion rider was not having any privity of contract with the insurance company and he was not entitled to any compensation. The Tribunal ought to have seen that the insurance company had examined its officer and established that the rider of the TVS motor cycle was not having any valid driving licence, still passing of the award was wholly unsustainable. The Tribunal had taken the monthly income of the deceased as Rs.3,000/- per month without any evidence, the multiplier was applied as 13 for the age of 45 years, the proper multiplier as per the Bhagawandas table was 10.45. The Tribunal awarding a sum of Rs.50,000/- towards loss of estate was on higher side. The compensation awarded was excessive and prayed to set aside the award.

13. Heard the learned counsel for the claimants and the learned counsel for the insurance company.

14. As seen from the grounds of appeal, the insurance company was challenging the award both on the aspect of quantum of compensation and on the aspect of its liability. The claimant also

filed the appeal questioning the quantum of compensation awarded by the Tribunal. The Tribunal accepted the occupation of the deceased as Mason as evident from Ex.A3 inquest panchanama but considered the earnings as Rs.3,000/- per month. The contention of the learned counsel for the claimants was that when the occupation of the deceased was accepted by the Tribunal as a Mason which was a skilled work, the Tribunal ought not to have considered the income of the deceased as Rs.3,000/- per month and relied upon the judgment of the Hon'ble Apex Court in **Shivakumar M Vs. The Managing Director, Bangalore Metropolitan Transport Corporation**[1] wherein it was held that:

> *"...there was no evidence available with regard to the income of the appellant but there is no dispute on the fact that he was a painter by profession. The accident happened in the year 2013 when he was living in Bangalore, Karnataka.*
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> *8. For a casual worker, who goes from house to house and place to place doing his painting work it is difficult to get any evidence, since there is no employer. He does his daily work, sometimes piece rated work as well. That is why he made a moderate self estimation of his income as Rs.15,000/- to Rs.16,500/-."*

[1] 2017(5)SCC 79

15. He also relied upon the judgment of the High Court of Madras in **Saritha and others Vs. Siva and another**[2] wherein also the deceased was working as a building Mason, it was held that:

> *"14. ...the deceased was working as a Building Mason and he has completed 40 years of age at the time of accident and he died leaving behind his wife, two children and his aged mother. The mitigating circumstances are also to be taken into consideration while fixing the notional income. Alterations may not be possible in view of certain facts and circumstances.*
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> *15. With reference to the case on hand, the deceased was residing in a rural area. Even in a rural area, fixation of notional income of Rs. 6,000/- per month is undoubtedly lesser and therefore, this Court has no hesitation to arrive a conclusion that the Tribunal has committed an error in fixing the notional income of the deceased. For instance, per day wages for a Mason in a rural area may be Rs. 400/- to Rs. 500/- and in semi urban areas, it may be Rs. 600/- to Rs. 700/- and in urban areas, it may be Rs. 800/- to Rs. 900/- or even Rs. 1,000/-. In Cities like Chennai, even it may be Rs. 1,100/- or Rs. 1,200/-. However, a pragmatic approach is required while fixing the notional income of the persons. The pragmatic approach here is that what would be the prevailing wages for a particular category of the employee or the worker in the particular area in which that persons are working. Thus, place of working, nature of job whether skilled or unskilled, age of the person as well as the other mitigating factors form part of consideration for the purpose of fixation of notional monthly income for grant of compensation under the Motor Vehicles Act, 1988."*

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[2] 2021 ACJ 1479

16. In the above case, the income of the deceased was considered as Rs.12,000/- per month for the accident occurred in the year 2015. The date of accident in the present case was on 05.06.2007 that is much prior to the date of accident in the above case. As the claimants themselves claimed an amount of Rs.6,000/- per month as the income of the deceased in their claim petition, it is considered reasonable to accept the said amount.

17. As per the judgment of the Hon'ble Apex Court in **National Insurance Co. Ltd vs Pranay Sethi and others**[3] a certain addition is to be added towards the loss of future income even for self-employed persons. Considering the age of the deceased as 45 years as per Ex.A3 and Ex.A5 certified copies of inquest and post mortem examination reports, an addition of 25% is considered towards his loss of future prospects. As the number of claimants being five, 1/4th is deducted towards the personal expenses of the deceased and multiplier 14 is taken as per the judgment of the Hon'ble Apex Court in **Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.**[4]**.** The monthly income of the deceased including the future

[3] 2017 ACJ 2700
[4] 2009 ACJ 1298

prospects and deducting the personal expenses is arrived as follows:

Income per month	:	Rs.6,000/-
Future Prospects at 25%	:	Rs.1,500/-
Total before deduction	:	Rs.7,500/-
Deduction of personal expenses	:	Rs.1,875/-
Total Income Per month	:	**Rs.5,625/-**

Hence, an amount of Rs.5,625/- is taken for calculating the loss of dependancy. The loss of dependancy is calculated as Rs.9,45,000/- (Rs.5,625/- x 12 x 14).

18. As per the judgment of the Hon'ble Apex Court in **Magma Magma General Insurance Co. Ltd. Vs. Nanu Ram & Ors.**[5]**,** all the petitioners/claimants are entitled for loss of consortium for the loss of love and affection and companionship of the deceased. Hence, an amount of Rs.40,000/- and 10% increase for every three years on the conventional heads as per the judgment of the Hon'ble Apex Court in **Pranay Sethi Case**, Rs.44,000/- for each claimant is awarded under this head.

19. An amount of Rs.15,000/- plus 10% increase for every three years is awarded under the conventional head for 'loss of estate' and

[5] (2018) 18 SCC 130

'funeral expenses' as per the same judgment of the Hon'ble Apex Court in **Pranay Sethi Case**. Hence, the compensation entitled by the claimants under various heads is as under:-

Loss of dependancy	Rs. 9,45,000/-
Loss of consortium (Rs.44,000/- x 5)	Rs. 2,20,000/-
Loss of estate	Rs. 16,500/-
Funeral Expenses	Rs. 16,500/-
TOTAL	**Rs.11,98,000/-**

20. The above compensation of Rs.11,98,000/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization.

21. On the aspect of liability, challenging the award on the ground of triple riding by the insurance company, the learned counsel for the claimants relied upon the judgment of the Hon'ble Apex Court in **Mohammed Siddique & Anr. vs National Insurance Company Ltd & Ors.**[6] wherein it was held that:

> *"13. ...The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the*

[6] 2020 (1) ALD 231 SC

driver of a two wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not *assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW3 to the effect that 2 persons on the pillion added to the imbalance.*

14. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

22. Thus, the triple riding itself cannot be a ground to consider that there was contributory negligence on the part of the rider of the TVS motor cycle. However, the deceased is one of the pillion riders but not the rider of the TVS motor cycle. Hence, the aspect of the contributory negligence cannot be attributed to a pillion rider. In the absence of rebuttable evidence adduced by the insurance company to show any causal connection between the violation and the accident, the Tribunal rightly rejected the plea of contributory negligence raised by the insurance company.

23. The other contention on which the insurance company challenged its liability was that the rider of the motor cycle was not

having a valid and effective driving licence and got examined RW.1, its Legal Manager and exhibited the legal notice issued by the company to the respondent No.1 to produce the driving licence. The Tribunal observing that the respondent No.2 did not choose to summon relevant record from the Road Transport Authority or even from the investigation officer to establish that the rider of the offending motor cycle was not having valid and effective driving licence at the time of the accident, rejected the plea of the insurance company, though, the charge sheet was disclosing that the rider of the motor cycle was also prosecuted for the offence under Section 181 of the Act. The Tribunal observed that no sanctity could be attached to the averments in the charge sheet.

24. The Hon'ble Apex Court in **National Insurance Co. Ltd. vs Swaran Singh & Ors**[7] in the summary findings held that:

> "*(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving*

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[7] 2004(3)SCC 297

> *licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.*
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> *(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal."*

25. Thus, the Hon'ble Apex Court held that 'pay and recovery' shall be ordered even if the insurer had satisfactorily proved its defence. As the copy of the charge sheet marked under Ex.A2 would disclose that the rider of the motor cycle was also charged for the offence under Section 181 of the Act and even though a notice was

issued by the insurance company to the owner to produce the driving licence, he failed to produce the same, it is considered fit to direct the insurance company to pay to the claimants first and recover later from the insured.

26. As there is no restriction that the Court cannot award compensation exceeding the claim amount as per the judgments of the Hon'ble Apex Court in **Nagappa vs Gurudayal Singh & Ors**[8], **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram**[9]**, Abrahim Vs. Raju**[10] and **Ramla and others Vs. National Insurance Co. Ltd and others**[11], the claimants are awarded an amount of Rs.11,98,000/- as compensation, subject to the payment of court fee on the enhanced amount.

27. In the result, the appeal filed by the insurance company *vide* M.A.C.M.A.No.2187 of 2013 is dismissed and the appeal filed by the claimants *vide* M.A.C.M.A.No.1860 of 2011 is allowed. An amount of **Rs.11,98,000/-** (Rupees Eleven Lakhs Ninety Eight Thousand Only) with interest @ 7.5% per annum is awarded to the claimants

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[8] 2003 ACJ SC
[9] 2018 ACJ 2782
[10] 2011 ACJ 2845
[11] 2019 ACJ 559

from the date of petition till the date of realisation. The insurance company is directed to deposit the above amount within a period of eight weeks. The enhanced amount shall be apportioned among the claimants in the same manner as stated by the Tribunal. The amount if any, paid by the insurance company shall be deducted from out of this amount. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

January 30, 2023
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THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. Nos.1860 of 2011 and 2187 of 2013

January 30, 2023

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