THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. No.3420 of 2009

JUDGMENT:

This appeal is filed by the claimants aggrieved by the Award and Decree dated 17.09.2008 in O.P.No.896 of 2005 by the Chairman, M.A.C.T., Nizamabad in allowing the claim of the petitioners as against the owner of the vehicle, respondent No.1 and dismissing the claim against the insurance company, respondent No.2.

2. The parties are hereinafter referred to as they were arrayed before the Tribunal in O.P.No.896 of 2005.

3. The case of the claimants as per the claim petition filed by them under Section 166 of the Motor Vehicles Act, 1988 (for short, *'MV Act')* was that on 29.08.2005 while the deceased Chinna Sailoo @ Sayanna was travelling in the auto rickshaw bearing No.AP1T6479 along with others from Valegaom village towards Bhainsa village, when the auto was passing through Kamala Jinning Mill at Bhainsa, the driver of the auto drove the same in a rash and negligent manner with high speed, lost control over the auto due to which the auto went off the road and ran over a big boulder and fell into a ditch by turning turtle due to which the deceased came under the

auto. He sustained multiple and grievous head injuries, fracture of skull and multiple grievous injuries all over the body and was shifted to Government Hospital, Bhainsa where he was given first aid and was referred to Gandhi hospital, Secunderabad, where he died on 31.08.2005 at 11:55 P.M. while undergoing treatment.

4. The claimants are the wife, children and the mother of the deceased Chinna Sailoo @ Sayanna. They contended that the deceased was 32 years of age, he was doing agriculture and vegetable business and was earning more than Rs.12,000/- per month and claimed compensation of Rs.10,00,000/- from respondent Nos.1 and 2, the owner and the insurer of the auto bearing No. AP1T6479.

5. The owner of the auto filed counter submitting that the auto was insured with the respondent No.2 and in case the petitioners were found entitled for compensation, then it was only the respondent No.2, who was liable to pay compensation.

6. Respondent No.2 filed counter contending that the driver of the auto was not holding valid driving licence at the time of the accident and was carrying the passengers more than its capacity, the owner of the auto had

violated the terms and conditions of the policy, as such there were not liable to pay any compensation to the claimants.

7. Before the Tribunal, the petitioner No.1 was examined as PW.1 and got examined an eye witness to the accident as PW.2. Exs.A1 to A11 are marked on behalf of the petitioners. The respondent No.2 got examined one of its officials as RW.1 and marked Exs.B1 to B3 on its behalf.

8. On considering the pleadings and evidence on record, the Tribunal held that the accident took place due to the rash and negligent driving of the driver of the auto bearing No. AP1T6479. The Tribunal considered the age of the deceased as 35 years as per the inquest and PME reports marked under Exs.A2 and A3 and considered his income as Rs.3,000/- per month and after deducting 1/3rd of his income towards his personal expenses and applying the multiplier 16 arrived at the loss of dependency as Rs.3,84,000/- and awarded Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium to the petitioner No.1 and Rs.10,000/- towards loss of love and affection to petitioner Nos.2 and 3.

9. The Tribunal on considering the evidence of PW.2 that 7 passengers were travelling in the auto rickshaw at the time of the accident, when the

permitted seating capacity was only 4 and as the charge sheet marked under Ex.A5 would disclose that the driver was not holding a valid driving licence and as such, charge under Section 3/181 of the MV Act was also framed against him and the owner of the auto failed to show that the driver was holding a valid driving licence and considering the judgment of the Hon'ble Apex Court in **Sardari and others Vs. Sushil Kumar and others**[1] exonerated the insurance company from liability and held the owner of the vehicle alone is responsible to pay compensation to the claimants.

10. Aggrieved by the same, the claimants preferred this appeal contending that the Tribunal failed to consider the several judgments of the Hon'ble Apex Court wherein it was held that in case of contravention of any of the conditions of the Insurance policy, the insurance company was liable to pay the claim amount to the claimants and then recover the same from the owner of the vehicle and relied upon the judgments of Hon'ble Apex Court in **Premkumari and Others Vs. Prahlad Dev and Others**[2] and **S. Iyyapan Vs. United India Insurance Company Limited and Another**[3]**.**

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[1] 2008 ACJ 1307
[2] (2008) 3 SCC 193
[3] (2013) 7 SCC 62

11. Heard learned counsel for the appellants and learned counsel for the respondent No.2/insurance company.

12. Learned counsel for the claimants contended that quantum of compensation awarded by the Tribunal was also not in accordance with law laid by the Hon'ble Apex Court in its various judgments and relied upon the judgment of the Hon'ble Apex Court in **Chandra Alias Chand Alias Chandraram and another Vs. Mukesh Kumar Yadav and others**[4] on the aspect that,

> *"…the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income, same does not justify adoption of lowest tier of minimum wage while computing the income..."*

13. Learned counsel for respondent No.2/insurance company on the other hand contended that the Tribunal rightly considered all the aspects. The owner of the vehicle respondent No.1 participated in the proceedings but failed to produce the driving licence of the driver and to show that the policy conditions were complied with. In the judgment relied by the learned counsel for the petitioner in **S. Iyyapan Vs. United India**

[4] (2022) 1 SCC 198

Insurance Company Limited and Another (3 supra), the driver was having some licence though not a valid licence, but in the present case the driver was not holding any driving licence. As such, the Tribunal rightly exonerated the insurance company from liability. The charge sheet itself would disclose that the driver was charged for the offences under Sections 3/181 of the MV Act. The Tribunal rightly relied upon the judgment in **Sardari and others Vs. Sushil Kumar and others** (1 supra) and prayed to dismiss the appeal.

14. With regard to the quantum of compensation, the Tribunal considered the income of the deceased as only Rs.3,000/- per month even though the petitioners claimed that he was earning an amount of Rs.12,000/- per month by doing agriculture and vegetable business. The claimants filed Ex.A10 copy of pass book to show that the deceased was having one acre 4 guntas of dry land but the Tribunal observed that the land was in the name of the claimant No.4 i.e., mother of the deceased and not in the name of the deceased and not believed that he was having any lands. As the mother of the deceased was also living with the family of the deceased, it can be considered that the deceased was looking after the agricultural lands of his mother and that the family was enjoying the said

income from the agricultural lands. Even though the claim of Rs.12,000/- per month is not accepted, the income of the deceased can atleast be considered as Rs.5,000/- per month considering that the family was having some agricultural lands and income from out of it.

15. As per the judgment of the Hon'ble Apex Court in **National Insurance Co. Ltd vs Pranay Sethi and others[5],** even in case of self-employed persons, an addition of percentage on income shall be considered towards future prospects basing on the age of the deceased. Considering the age of the deceased as 35 years, as per the inquest report and PME reports marked under Exs.A2 and A3, an addition of 40% on Rs.5,000/- i.e., Rs.2,000/- is taken towards his future prospects. Considering the number of dependants/claimants being 4, 1/4th of the income is deducted towards the personal expenses of the deceased. As such, an amount of Rs.5,250/- (Rs.7,000-Rs.1,750 (1/4th of Rs.7,000/-)) is considered for the purpose of calculating the loss of dependency. The multiplier 16 is rightly applied by the Tribunal as per the judgment of the Hon'ble Apex Court in **Sarla Verma and Ors. Vs Delhi Transport Corporation and Anr.[6].** Hence, the loss of dependency is calculated as Rs.10,08,000/- (Rs.5,250 /- x 12 x 16).

[5] 2017 ACJ 2700
[6] 2009 ACJ 1298

16. As per the judgment of the Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram & Ors.**[7]**,** all the petitioners/claimants are entitled for loss of consortium, for the loss of love and affection 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** (5 supra), Rs.44,000/- for each claimant is awarded under this head.

17. An amount of Rs.15,000/- plus 10% increase for every three years is awarded under the conventional head for loss of estate and funeral expenses as per the same judgment of the Hon'ble Apex Court in **Pranay Sethi Case**. Hence, the compensation awarded to the claimants under various heads is as under:-

Loss of dependency	Rs.10,08,000/-
Loss of consortium (Rs.44,000/- x 4)	Rs. 1,76,000/-
Loss of estate	Rs. 16,500/-
Funeral Expenses	Rs. 16,500/-
TOTAL	**Rs.12,17,000/-**

18. As there is no restriction that the Court cannot award compensation exceeding the claim amount as per the judgments of the Hon'ble Apex

[7] (2018) 18 SCC 130

Court in **Nagappa vs Gurudayal Singh & Ors**[8], **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram**[9] and **Ramla and others Vs. National Insurance Co. Ltd and others**[10], the claimants are awarded an amount of Rs.12,17,000/- as compensation which is considered just and reasonable.

19. The compensation is apportioned among the claimants as follows:-

Claimant No.1	Rs.4,17,000/-
Claimant No.2	Rs.4,00,000/-
Claimant No.3	Rs.4,00,000/-
Claimant No.4	Rs.4,00,000/-

20. Coming to the main aspect of contention with regard to the exoneration of insurance company from the liability, the learned counsel for the respondent No.2/insurance company relied upon the judgment of the Hon'ble Apex Court in **Sardari and others Vs. Sushil Kumar and others** (1 supra) wherein by considering the three-judge bench in **National Insurance Co. Ltd. Vs. Kusum Rai & Ors.**[11] **Premkumari & Ors. Vs. Prahlad Dev & Ors**. (2 supra), **Oriental Insurance Co. Limited Vs.**

[8] 2003 ACJ SC
[9] 2018 ACJ 2782
[10] 2019 ACJ 559
[11] (2006) 4 SCC 250

Prithvi Raj[12] and **Ishwar Chandra & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors.**[13]**,** the Hon'ble Apex Court held that the owner of the vehicle has a statutory obligation to see that the driver of the vehicle whom he authorized to drive holds a valid licence.

21. There is no dispute with the said principle reiterated by the Hon'ble Apex Court in the above case but however, the Hon'ble Apex Court in **Premkumari & Ors. Vs. Prahlad Dev & Ors**. (2 supra) as well as in **S. Iyyapan Vs. United India Insurance Company Limited and Another** (3 supra) held that

> *"…Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk.*
>
> *…Section 149(2)(a)(ii) of the said Act gives a right to the insurer to take a defence that person driving the vehicle at the time of accident was not duly licensed. In other words, Section 149(2)(a)(ii) puts a condition excluding driving by any person who is not duly licensed.*
>
> *…Reading the relevant provisions of the Motor Vehicles Act, it is clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount…"*

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[12] 2008 ACJ 733
[13] 2007 ACJ 1067

Hence, considering that there is a valid insurance policy marked as Ex.B1, it is considered fit to direct the insurance company to pay compensation to the claimants first and then recover later from the insurer, the owner of the vehicle.

22. In the result, this Appeal is allowed directing the insurance company to pay the amount of **Rs.12,17,000/-** (Rupees Twelve Lakhs Seventeen Thousand Only) with 7.5% interest per annum from the date of petition till the date of deposit to the claimants within a period of two months from the date of receipt of a copy of this order and to recover the same from respondent No.1/owner of the vehicle. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

February 06, 2023
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THE HON'BLE Dr. JUSTICE G. RADHA RANI

M.A.C.M.A. No.3420 of 2009

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