THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.1462 of 2018

JUDGMENT:

This appeal is preferred by United India Insurance Company Limited, questioning the order and decree, dated 05.03.2019 passed in O.P.No.132 of 2015 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Asifabad (for short, "the Tribunal").

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

3. Brief facts of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.6,00,000/- for the death of K.Srinivas, husband of petitioner No.1, father of petitioner No.2, son of petitioner No.3 (hereinafter referred as 'the deceased') in a road traffic accident that occurred on 09.03.2013. It is stated that on 09.03.2013 at about 8.30 p.m., while the deceased was travelling in an auto bearing No.AP 36 W 6631 from Goleti cross road to Goleti village, when he reached near Goleti village, the driver of the said auto drove it in a rash and negligent manner with high speed and applied sudden breaks, a result of which, the deceased sustained head injury and multiple injuries all over the body. Immediately, he was shifted to Government

Hospital, Bellamapally, that after first aid, he was admitted in Chalimeda Anand Rao Institute of Medical Sciences at Karimnagar, where the deceased succumbed to the injuries and died on 13.03.2013 at 4.30 p.m. The claimants spent Rs.50,000/- towards hospital and medical expenses and Rs.10,000/- towards transportation. Therefore, the claimants have laid the claim against the respondents seeking compensation of Rs.6,00,000/- under various heads.

4. Considering the claim and the counter filed by the respondent No.2, insurance company, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. and awarded compensation of Rs.4,52,000/- with interest at 9% per annum. However, for the violation of terms and conditions of the policy, the respondent No.2 was directed to first pay the compensation and then recover the same from the respondent No.1. Challenging the same, the present appeal has been filed by the insurance company.

5. Heard both sides and perused the record.

6. A perusal of the impugned judgment discloses that the Tribunal has framed issue No.1 as to *whether the accident had occurred due to rash and negligent driving of the vehicle owned*

by respondent No.1, and after considering the evidence of P.W.1 coupled with the documentary evidence i.e., Ex.A1, First Information Report and Ex.A3, charge sheet, the tribunal has categorically observed that the accident has occurred due to the rash and negligent driving of the said auto by its driver and has answered the issue in favour of the claimants and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the said auto by its driver.

7. The main contention of the learned Standing Counsel for the appellant is that the driver of the offending vehicle was not having valid driving licence at the time of the accident and there was breach of terms and conditions of the Policy, the Insurance Company is not liable to pay the compensation. It is no-doubt true that the appellant-insurance company has sufficiently established the fact that the driver of the said auto was not holding valid driving licence and there was breach of terms and conditions of the policy. In the case of third party risks, as per the decision in ***National Insurance Company Ltd. V. Swaran Singh and others***[1], the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. In

[1] (2004) 3 SCC 297

the said decision, the Apex Court considered the doctrine of "*pay and recover*" examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in the case of **Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others**[2], following its earlier decision in **Swaran Singh** (supra), reiterated that "*even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.*" In view of the above, the tribunal was right in directing the appellant to pay the compensation amount at the first instance and then recover the same from the owner of the vehicle and the said findings needs no interference by this Court.

8. On the other hand, learned counsel for the respondents argued that the amount awarded by the Tribunal is meager and prayed for just compensation.

[2] 2018 ACJ 2163

9. Insofar as the quantum of compensation is concerned, the case of the claimants is that deceased was earning Rs.10,000/- per month by doing kirana business and cultivation. The claimants in order prove the income of deceased, no documentary evidence is produced. This Court has perused the award passed by the Tribunal and found that the Tribunal has erred in deducting the income of the deceased by treating him as a bachelor. However, the deceased is a married person having spouse, daughter and mother. Considering the avocation of the petitioners and the accident is of the year 2013, this Court is inclined to fix the income of the claimant as Rs.4,500/- per month as he is a skilled person, and added 25% thereto, towards future prospects as per the decision of the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**[3], which comes to Rs.5,625/- (Rs.4,500 + 1,125). After deducting 1/3rd towards personal expenses, the income of the deceased comes to Rs.3,750/-. As per the records, the deceased was aged between 41 and 45 years at the time of accident. Therefore, the appropriate multiplier in light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[4] is "14". Thus, the future loss of

[3] 2017 ACJ 2700

[4] 2009 ACJ 1298 (SC)

income comes to **Rs.6,30,000/-** (Rs.3,750/- x 12 x 14). That apart, the claimant is entitled to Rs.77,000/- under conventional heads as per ***Pranay Sethi*** (Supra). Further, the claimant No.2, being the minor daughter of the deceased, is entitled to Rs.40,000/- towards filial consortium in view of the judgment of the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others[5].** Thus, in all, the claimants are entitled to Rs.7,47,000/- .

10. Insofar as the liability is concerned, while answering issue No.2, the Tribunal has categorically held that no evidence is adduced to show that said policy does not relate to insurance of vehicle of respondent No.1 As such it has to be held that the vehicle of respondent No.1 is validly insured by the respondent No.2 and the policy covers the risk of petitioners and there is no evidence of breach of any conditions of policy and it is also held that there is insurance coverage to the said auto. No ground is made out by the learned counsel for the appellant to interfere with the well reasoned order passed by the Tribunal. Hence, the M.A.C.M.A. is devoid of merits and the same is liable to be dismissed.

[5] (2018) 18 SCC 130

11. Accordingly, the M.A.C.M.A. is dismissed confirming the award and decree passed by the Tribunal. However, in view of the forgoing observations of this Court, the compensation of Rs.4,52,000/- awarded by the Tribunal is hereby enhanced to Rs.7,47,000/- which is just and reasonable compensation, to be paid by the respondent Nos.1 and 2 jointly and severally towards just compensation. The compensation amount shall carry interest at 7.5% p.a. from the date of passing of order by the Tribunal till the date of realization. Time to deposit the entire compensation is two months from the date of receipt of a copy of this judgment. The claimants shall pay the deficit court fee and on such payment of court fee only, they are entitled to withdraw the compensation amount without furnishing any security. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSINI

06.02.2023
Gms/pgp

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