

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.3309 of 2008

JUDGMENT :

This appeal is arising out of the judgment and decree in O.P.No.560 of 2003, dated 28.03.2008 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P.

3. The appeal is filed by the Insurance Company/2nd respondent in the O.P.. The O.P. is filed by the claimants before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.8,00,000/- for the death of the deceased, named, Shaik Yousuf, who died in the accident that occurred on 24.02.2003.

4. On the date of accident, the deceased was travelling in an Auto bearing No.AP-25-U-3744 and when it reached the outskirts of Siddapur at about 11.30 p.m., the driver of the Auto drove it in a

rash and negligent manner, lost control, due to which, the Auto turned turtle and deceased died on the spot. The deceased was aged 35 years as on the date of the accident and was earning Rs.6,000/- per month by doing business and the claimants lost the financial assistance and love and affection of the deceased. The claimants are the wife, minor children and parents of the deceased, altogether six in number.

5. A detailed counter was filed by the Insurance Company denying the nature of the accident, income and age of the deceased and also about negligence on the part of the driver of the Auto. Further, it is the specific contention of the insurance Company that the respondent was not liable to pay compensation for the death of the owner/insured, who was travelling in his own vehicle, and prayed to dismiss the claim petition.

6. The Tribunal, after considering the oral and documentary evidence on record, has granted compensation of Rs.6,29,000/- to the claimants. Being aggrieved by the said order, the Insurance Company has preferred this appeal.

7. Heard learned counsel for both the parties and perused the record.

8. It is the specific contention of the appellant/insurance Company that the owner of the Auto was travelling in the Auto at his own risk and there is no coverage under the Policy, but the Tribunal has erred in granting compensation to the deceased, who is not a third party. It is further contended that no separate premium was paid for the Policy to cover the risk, and therefore, the Insurance Company is not liable to pay compensation, and accordingly prayed to set aside the orders of the Tribunal.

9. On the other hand, the learned counsel for respondents contended that it is a package policy and the liability of the Insurance Company is unlimited and that the deceased/owner of the Auto travelled in the Auto as a passenger, and therefore, the Insurance Company is liable to pay compensation. In support of his contentions, the learned counsel for respondents has relied on the following judgments of this Court and also of the Apex Court:

**1. Royal Sundaram Alliance Insurance Co. Ltd.,
Secunderabad v. Vemavaram Sudheer Babu &
others¹**, wherein, their Lordships have held as under :

“Section 147 of the Act does not require an Insurance Company to cover the risk of the death or bodily injury to the gratuitous passenger, but the insurer can enter into a contract of insurance with the insured, covering a risk wider than the minimum requirement of the statute, covering the risk of the owner of the vehicle/insured or gratuitous passenger or such other risks not mandated by the statute. This proposition is very well settled in view of the ruling of this Court reported in 2010 ACJ 585. In 2008 (6) ALD 15 (SC) it was held that indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle and in terms of Section 147 of the Act, only in regard to the reimbursement of the claim to a third party, a contract of insurance must be imperatively taken by the owner of the vehicle and when however an owner of a vehicle intends to cover himself from other risks, it is permissible to enter into a contract of insurance, in which event the insurer would be bound to reimburse the owner of the vehicle, strictly in terms thereof. It was also held that the provisions of the Act, in particular, Section 147 must be kept confined to third party risk and a contract of insurance, which is not statutory in nature, should be construed like any other contract. These observations made by the Apex Court would mean, that apart from the terms of the policy being in consonance with the requirements of Section 147, the contract of

¹ 2019 (2) ALD 343 (DB)

insurance can specify the terms in accordance with the requirements and the intention of the insured. If a wider coverage is given under the contract of insurance, the insurer would be liable for the liability that arises in terms of the said contract.

22. However, the substance of all the judgments relied upon both by the claimant's counsel and the respondent's counsel seems to be that the insurer is not obligated to cover the risks outside the requirements of Section 147 of the Act policy, but under a comprehensive package policy, the insurer can contract with the insured for wider coverage and the terms can be specified. The ultimate exercise that fall upon us is to interpret the terms of the policy. The policy would show that it has covered the risk of the occupants of the car and that of the owner-cum-driver. By looking at the extent of coverage given by the policy, the intention of the insurer can be gathered. The terms imply that the policy was taken with an intention to give coverage to all the risks arising out of the use of the vehicle. In such circumstances, giving a narrow interpretation to the words "owner-cum-driver", to mean the owner, only while driving the car, would be against the spirit of the terms of policy. Hence, we opine that the owner, who was travelling in the car as an occupant is also covered by the terms of the policy.

23. But, however, the insurer was conscious in restricting the liability in respect of the owner-cum-driver, only to Rs.2 lakhs. Hence, the liability of the insurer cannot, in our opinion, go beyond Rs.2 lakhs. Hence, the claimants in MA CMA No.4522 of 2008 would be entitled only upto Rs.2 lakhs."

2. Oriental Insurance Co. Ltd. v. Rajni Devi & others²,

wherein, their Lordships have held in para 10 as under:

“In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading ‘Own damage’ is for covering liability towards personal injury. Under the heading ‘Own damage’, the words ‘premium on vehicle and non-electrical accessories’ appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.”

3. Ramachandrappa v. Royal Sundaram Alliance

Insurance Co. Ltd³, wherein, the Hon’ble Supreme Court has taken the income of the deceased/coolie, as Rs.4,500/- per month.

10. Further, the cross-examination of RW-1 clearly disclose that the Auto was being driven by the driver by name Mohd.Hafeezuddin and a charge sheet was filed against the driver of the Auto, showing the deceased as a passenger at the time of accident and the Policy covers the risk of 3 passengers and one

² Appeal (Civil) No.2892 of 2008

³ (2011) 13 SCC 236

driver. RW-1 also admitted in his cross-examination that two passengers were sitting in the auto at the time of the accident and the claim of one passenger by name Mohd. Wasim, was settled in the Lok Adalat. Therefore, this Court is of the considered view that the deceased, who travelled as a passenger in the Auto is also entitled for compensation as benefit was given to one passenger. As per the judgments of the Apex Court and the Division Bench of this Court, the claimants are entitled for compensation as the Policy covers the risk of the occupants of the Auto including the owner-cum-driver of the Auto.

11. On perusal of the entire evidence on record, there is no dispute as to the manner in which the accident occurred. The claimants are the family members of the deceased. It is pertinent to mention that the Tribunal has taken the monthly income of the deceased as Rs.4,500/- per month even in the absence of the documentary evidence. As per the proposition laid down in **Ramchandruppa's** case (3 supra), an amount of Rs.4,500/- can be fixed for a coolie/labourer even in the absence of documentary evidence. Therefore, this Court finds no error or irregularity in

considering the income of the deceased as Rs.4,500/- per month as the accident occurred in the year 2003.

12. The deceased was aged about 35 years as on the date of the accident as per Exs.A-2 and A-3 (inquest and postmortem reports respectively) and the income of the deceased can be taken as Rs.4,500/- per month. If 40% is added towards future prospects, it would come to Rs.6,300/- (Rs.4,500+1,800). The claimants are six in number, therefore, $1/4^{\text{th}}$ is to be deducted towards the personal expenses of deceased, which comes to Rs.4,725/- (Rs.6,300X $1/4$ =Rs.1,575; Rs.6,300-1,575). As per the judgment of Hon'ble Supreme Court in **Smt.Sarla Verma v. Delhi Transport Corporation & another**⁴, the multiplier applicable is '16' for the age group of 31 to 35 years. The annual income of the deceased would be Rs.9,07,200/- (Rs.4,725 X 12 X 16).

13. As per the judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi & others**⁵, wife, children and parents of the deceased are entitled to Rs.40,000/- each towards

⁴ (2009) 6 SCC 121

⁵ 2017 ACJ 2700

consortium and Rs.15,000/- towards funeral expenses and another Rs.15,000/- towards loss of estate.

14. Thus, the claimants are entitled to compensation under the following heads;

1.	Loss of dependency	Rs.9,07,200/-
2.	Funeral expenses	Rs.15,000/-
3.	Consortium (Rs.40,000/- to the wife, children and parents of the deceased, 6 in all)	Rs.2,40,000/-
4.	Loss of estate	Rs.15,000/-
	TOTAL	Rs.11,77,200 /-

15. Accordingly, the appeal is dismissed by enhancing the compensation amount awarded by the Tribunal from Rs.6,29,000/- to Rs.11,77,200/- to the claimants along with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, payable by the appellant/Insurance Company, within two months from the date of receipt of a copy of this order. The claimant Nos.2, 3 and 4 were minors as on the date of claim petition and they would have become majors by this time. As the accident occurred in the year 2003, all the claimants are equally entitled to the compensation and they are permitted to withdraw

their respective shares of compensation, after duly paying the deficit Court fee.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 05.01.2023

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