

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.1749 of 2010

JUDGMENT:

Challenging the order and decree, dated 30.06.2010, passed in M.V.O.P.No.532 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short "the Tribunal"), the claimants filed the present appeal.

The facts, in issue, are as under:

The claimants, who are the husband and children of one V.Pushpa (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.4,50,000/- for the death of the deceased, who died in a motor vehicle accident that occurred on 21.05.2006. It is stated that on that day the deceased, along with others, was traveling in Innova Car bearing No.AP 29 H-4329 from Shirdi, Tuljapur to Hyderabad and when the said vehicle reached near Nirna Cross Roads on N.H.No.9, the driver of the said vehicle drove it in a rash and negligent manner with high speed and dashed to a Bus-stand building, due to which the inmates of the vehicle including the deceased sustained grievous injuries. Basing on the complaint, a case in Crime No.67 of 2006 has been registered against the driver of the Car. Immediately after the accident, the deceased was shifted to Government Hospital, Mannaekkali and she died while shifting to Gandhi Hospital,

Secunderabad. It is further stated that the deceased was aged about 41 years and was earning Rs.4,500/- per month as maid servant. Hence, the claimants filed claim-petition against the respondents 1 and 2, being the owner and insurer of the said Car.

Before the Tribunal, the 1st respondent remained *ex parte* and the 2nd respondent filed counter denying the manner in which the accident took place, age, avocation and earnings of the deceased and the relationship of the claimants with the deceased. It is also denied by the 2nd respondent that the vehicle involved in the accident was insured with the 2nd respondent and the person, who drove the vehicle, was having valid and subsisting driving licence to drive such vehicle and the vehicle was roadworthy to ply. It is further contended that the claimants are not entitled to claim interest on non-pecuniary damages and also the interest claimed is highly excessive. In the additional counter, it is stated by the 2nd respondent that as per the police record, the crime vehicle was used for hire purpose at the time of accident and the policy was issued for private use, as such, the 1st respondent has violated the terms and conditions of the policy and, therefore, the 1st respondent alone is liable to pay the compensation and the 2nd respondent has no liability to pay any compensation and the petition is liable to be dismissed against the 2nd respondent.

Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- 2) Whether the petitioners are entitled for compensation, if so, at what quantum and from whom?
- 3) To what relief?

On behalf of the claimant, P.Ws.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B4 were marked.

After analyzing the evidence available on record, the Tribunal while awarding compensation of Rs.2,80,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till realization, held that since the deceased had traveled in a hired vehicle, it is against the terms and conditions of the insurance policy and, therefore, the Insurance Company is not liable to pay compensation and it is the 1st respondent, the owner of the Car, alone is liable to pay the compensation. Challenging the said finding and also not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal is filed by the claimants.

Heard the learned Counsel appearing on either side and perused the record.

Learned Counsel for the appellants/claimants submitted that the Tribunal dismissed the claim against the 2nd respondent on the ground that the 1st respondent has violated the terms and conditions

of the insurance policy by using the crime vehicle for hire purpose. He further submitted that in case of violation of policy conditions including driver of the offending vehicle not having valid driving licence at the time of accident, gratuitous passenger etc., still the Insurer has to pay the compensation to the claimants at the first place and shall recover the same from the owner of the vehicle later. In support of his contention, he relied upon the judgment of the Apex Court in *Manuara Khatun and others v. Rajesh Kumar and others*¹. Insofar as the enhancement of compensation is concerned, learned Counsel for the appellants/claimants would submit that as per the principles laid down by the Apex Court in the recent decisions, the income of the housewife is to be taken at Rs.3,000/- per month and the claimants are also entitled to future prospects. It is also submitted that the Tribunal did not award any amount under conventional heads. Therefore, he prayed to enhance the compensation awarded by the Tribunal.

On the other hand, the learned Standing Counsel for the Insurance Company submitted that with regard to the quantum of compensation, the Tribunal has adequately granted the compensation and the same needs no interference by this Court. Insofar as the liability is concerned, he submits that the vehicle was used for hire purpose and the deceased was traveling in the vehicle as gratuitous passenger and, therefore, the Tribunal has rightly

¹ (2017) 4 SCC 796

dismissed the claim against the 2nd respondent and the said order does not require any interference.

On considering the arguments advanced by both the learned Counsel, the issues that arise for consideration in this appeal are as under:-

1. Whether the claimants are entitled for enhancement of compensation?
2. Whether the vehicle was used for hire purpose and deceased, who was traveling in the vehicle, comes under the purview of gratuitous passenger and if the deceased comes under the purview of gratuitous passenger, pay and recovery can be ordered against the insurer?

Point No.1:

Admittedly, the claimants filed a claim-petition under Section 166 of the Motor Vehicles Act, and the rash and negligent act on the part of the driver of the Innova Car No.AP 29 H 4329 was proved. A perusal of the judgment of the Tribunal would show that after considering the age and avocation of the deceased, the Tribunal has rightly awarded an amount of Rs.2,80,000/- under the head of loss of income, which needs no interference. However, in *National Insurance Company Limited Vs. Pranay Sethi and others*², the Apex Court held that “the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses

² 2017 ACJ 2700

should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively".

A perusal of the impugned order would show that the Tribunal did not award any amount under conventional heads. In view of the law laid down by the Apex Court in *Pranay Sethi's case (2 supra)*, the claimants are entitled to Rs.70,000/- under conventional heads. Thus, in all the claimants are entitled to Rs.3,50,000/-.

Point No.2:-

Insofar as the liability of the 2nd respondent/Insurance Company is concerned, the Tribunal observed that R.W.1 stated in his evidence that in Ex.B4-161 Cr.P.C. statement, the witness, Krishna Reddy, stated that they hired the Innova Vehicle and traveled in it. In *Rajendra Singh v. State of U.P. and another*³, the Apex Court held that "the statements under Section 161 Cr.P.C. being wholly inadmissible in evidence, could not at all be taken into consideration." Relying upon the said judgment, in *N.Rama Krishna Reddy v. M.Santhakumari and another* (C.R.P.No.2939 of 2013) this Court held as under:-

"It is well settled that a statement made under Section 161 Cr.P.C. is not a substantive piece of evidence. However, in view of the proviso to Sub-section (1) of Section 162 Cr.P.C., the statement can be used for the limited purpose of contradicting the maker thereof in the manner set out in the said proviso."

³ (2007) 7 SCC 378

Further, in *National Insurance Co. Ltd. V. Saju P.Paul*⁴, the Apex Court took note of entire previous case law on the subject mentioned and examined the question in the context of Section 147 of the M.V. Act. While allowing the appeal filed by the Insurance Company by reversing the judgment in *Saju P.Paul v. National Insurance Co. Ltd.*⁵ of the High Court, it was held on facts that since the victim was traveling in offending vehicle as “gratuitous passenger” and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Apex Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

Recently, relying upon the said judgment, the Apex Court in *Manuara Khatun* (1 supra) held that the direction to the Insurance Company, being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them to first pay the awarded sum to the claimants and then recover the paid awarded sum from the owner of the offending vehicle in execution proceedings as per the

⁴ (2013) 2 SCC 41

⁵ 2012 ACJ 1852

law laid down in Para No.26 of *National Insurance Co. Ltd. V. Saju P.Paul* (3 *supra*).

It is not in dispute that the Innova Car was insured and Ex.B2-Insurance Policy clearly indicates that the accident has occurred during the policy period, it can be said that the deceased was travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited**⁶, the Apex Court while dealing with the case of gratuitous passenger directed the insurer to pay the awarded sum to the claimant therein and recover the same from the insured in the same proceedings.

For the aforesaid discussion and in view of the benevolence object of the Motor Vehicles Act, even though the liability of Insurance Company is exonerated, still the insurance company is liable to pay the compensation to the claimants at the first instance and then recover the same from the owner of the offending vehicle by invoking the principle “*pay and recover*” as laid down by the Apex Court in **Manuara Khatun v. Rajesh Kr. Singh** (1 *supra*).

Accordingly, the appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,80,000/- to Rs.3,50,000/- . The enhanced amount shall carry interest @ 7.5% per annum from the date of passing of the order i.e., from 30.06.2010 till the date of realization. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of the O.P. along

⁶ 2019(5) ALD SC 287

with accrued interest within two months from the date of receipt of a copy of this judgment, and then recover the said amount from the 1st respondent-owner. The enhanced amount shall be apportioned among the claimants equally. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand dismissed.

JUSTICE G. SRI DEVI

02.02.2022
Gkv/Gsn

