

Andhra Pradesh High Court - Amravati

Eagala Lovathalli, E.G.Dist. 3 ... vs Rayudu Chinna Rao, Pithapuram 2 ... on 12 May, 2023

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 812 of 2013

JUDGEMENT :

The appellants are claimants in M.V.O.P.No.99 of 2009 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VII Addl. District Judge (Fast Track Court), Kakinada and the respondents are respondents in the said case.

2. For the sake of convenience, both the parties in the appeal will be referred to as they are arrayed in the claim application.

3. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.3,00,000/- towards compensation for the death of Eagala China Apparao in a motor vehicle accident that occurred on 08.07.2008.

4. The brief averments of the claim petition are as follows:

VGKR,J MACMA No.812 of 2013 On 08.07.2008 the deceased went to Rowthulapudi along with one Killada Srinu to attend cooli work on a lorry bearing registration No.AP 16TX 815 and during return journey, when the lorry reached near the bridge in Rowthulapudi, the driver of the lorry drove the same in a rash and negligent manner and dashed against an electric pole and thereby, the lorry turned turtle and the deceased sustained fracture and head injury and later, succumbed to injuries while undergoing treatment in the Government General Hospital, Prathipadu. The 1st respondent is driver, the 2nd respondent is owner and the 3rd respondent is insurer of the offending lorry. Hence, all the respondents are jointly and severally liable to pay compensation to the claimants.

5. The 1st respondent was set ex parte.

6. The 2nd respondent did not choose to file any counter. The 3rd respondent filed a written statement by denying the manner of accident. It is pleaded that the 2nd respondent committed breach of terms of the policy.

VGKR,J MACMA No.812 of 2013

7. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident occurred out of the use of lorry bearing No.AP 16TX 815 and due to the rash and negligent driving of the said vehicle by the 1st respondent?

2. Whether the petitioners are entitled for compensation?

If so, to what amount and from which of the respondents? and

3. To what relief?

8. During the course of enquiry in the claim petition, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A.1 to A.3 were marked. On behalf of the respondents, R.Ws.1 to 4 were examined and Exs.B.1 to B.3 and Exs.X.1 and X.2 were marked.

9. At the culmination of the enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal allowed the petition in part and awarded a sum of Rs.2,04,000/- towards compensation to the claimants. Being aggrieved by the impugned award, the claimants preferred the appeal for VGKR,J MACMA No.812 of 2013 enhancement of compensation and for fixation of liability of payment of compensation on the 3rd respondent/Insurance company also.

10. Heard learned counsels for both the parties.

11. The grounds urged by the appellants/claimants are that the Tribunal failed to fasten the liability on the 3rd respondent/Insurance company, as the policy covers the risk of the deceased also, and also failed to observe that the policy clearly discloses that Rs.50/- was collected from the 2nd respondent as L.L. for operation/maintenance of two persons.

12. Now, the points for determination are:

1) Whether the claimants are entitled enhancement of compensation as prayed for? and

2) Whether the order passed by the Tribunal needs any interference?

13. POINT Nos.1 and 2 : On considering the evidence of P.Ws.1 and 2 and Exs.A.1 to A.3, the Tribunal came to the conclusion that the accident occurred due to rash and negligent VGKR,J MACMA No.812 of 2013 driving of the driver of the offending lorry as a result of that, the deceased died. No appeal was filed by the respondents against the order of the Tribunal. Therefore, there is no need to interfere with the said finding given by the learned Tribunal.

14. Coming to the compensation awarded by the Tribunal, though the claimants claimed the monthly income of the deceased at Rs.6,000/-, the Tribunal considered the monthly income of the deceased as Rs.1,500/- and after deducting 1/3rd of income towards personal expenses of the deceased, the contribution to the family members of the deceased arrived at Rs.12,000/- p.a. Here, the deceased was a bachelor. As per the decision of the Hon'ble Supreme Court in Sarla Varma Vs. Delhi Transport Corporation¹, if the deceased is a bachelor, 50% of the income has to be deducted towards personal expenses of the deceased. In view of the said decision, instead of deducting half of the monthly income of the deceased towards personal living expenses, the Tribunal 2009 (4) SCJ 91 VGKR,J MACMA No.812 of 2013 deducted 1/3rd of income towards personal expenses of the

deceased. Therefore, the said finding is liable to be set aside.

15. The accident occurred in the year 2008. As per Ex.A.2, the deceased was aged about 20 years. As per the decision in Sarla Varma case referred above, the appropriate multiplier applicable to the age group of the deceased is "18". On considering the entire material on record, the monthly income of the deceased is fixed at Rs.1,800/- and the annual income is arrived at Rs.21,600/-. So, as per Sarla Varma case, having deducted 50% of the income, Rs.10,800/- (Rs.21,600/- - Rs.10,800/-) is available towards contribution to the family members of the deceased and a sum of Rs.1,94,400/- (Rs.10,800/- x 18) is granted towards total contribution to the family members of the deceased. Apart from that, a sum of Rs.4,600/- is awarded towards funeral expenses and Rs.5,000/- is awarded towards loss of estate. In total, a sum of Rs.2,04,000/- is awarded to the claimants towards compensation.

16. It is the contention of learned counsel for the 3rd respondent/Insurance company that the deceased was a VGKR,J MACMA No.812 of 2013 gratuitous passenger and the offending lorry is a goods carrying vehicle and the deceased was not permitted to travel in the said vehicle. In support of this contention, the learned counsel placed reliance on a decision of the Hon'ble Apex Court in New India Assurance Co.Ltd. Vs. Asha Rani² wherein it is held as under:

"28. An owner of a passenger/carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But, if the ratio of this Court's decision in New India Assurance Co. V. Satpal Singh is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid. "

(2003) 2 SCC 223 VGKR,J MACMA No.812 of 2013

17. In the present case, the deceased was a third party. As per Ex.B.1-policy, a premium of Rs.800/- was paid towards third party liability and Rs.50/- was also paid towards premium of two persons for operation and maintenance, by the 2nd respondent/owner of the offending lorry. Ex.B.1 also reveals that the policy is a comprehensive policy. Therefore, the decision relied on by the learned counsel for the 3rd respondent is not applicable to the facts of the case on hand.

18. It is not the case of the Insurance company that the driver of the offending lorry i.e., the 1st respondent is not having valid driving licence at the time of accident. As per Ex.B.1, the offending vehicle was insured with the Insurance company and the policy is also in force. The same is not disputed by the Insurance company.

19. In National Insurance Co. Ltd. Vs. Swaran Singh and others³, the Hon'ble Supreme Court held as under:

2004 (2) ALD (SC) 36 VGKR,J MACMA No.812 of 2013 "The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

ii) The Hon'ble Supreme Court in its judgment in Francisca Luiza Rocha Vs. K. Valarmathi⁴ held as under:

"6. In the present case the owner of the vehicle did not contest the proceedings to prove and establish that in spite of best efforts the fact that the driver did not have a valid driving licence was not known to him. What alone stood proved (by the Insurer) was that the driver of the 2018 ACJ 1430 VGKR,J MACMA No.812 of 2013 vehicle did not have a valid driving licence on the date of the accident. As the driver had a licence but validity of the same had expired, we are of the view that the conclusion of the High Court that the said fact, by itself, constitutes a fundamental breach of the terms and conditions of the policy of insurance is not correct.

7. On the basis of the aforesaid finding, we will have to hold that the insurance company (M/s. United India Insurance Co. Ltd.) i.e. Respondent No. 2 herein would be liable to satisfy the award and thereafter seek recovery, if so advised, from the owner of the vehicle (Mrs. K. Valarmathi) i.e. Respondent No. 1. Consequently, with the aforesaid modification we dispose of the appeal in the above terms."

20. For the foregoing discussion and in view of the decisions of the Hon'ble Apex Court in Swaran Singh case and K. Valarmathi case referred to supra, the 3rd respondent/Insurance Company is liable to pay compensation to the claimants in the first instance and later recover the same from the 2nd respondent, who is owner of the offending lorry, by filing an execution petition and without filing any independent suit.

VGKR,J MACMA No.812 of 2013

21. In the result, the appeal is disposed of, the 3rd respondent/Insurance Company is directed to pay the total compensation of Rs.2,04,000/-, with interest at 7.5% p.a. from the date of petition till the date of payment as awarded by the Tribunal, to the claimants in first and later recover the same from the 2nd respondent/owner of the offending lorry by filing an execution petition and without filing any independent suit. The 3rd respondent/Insurance company is directed to deposit the said amount within two months from the date of this judgment and later recover the same from the 2nd respondent. On such deposit, the claimants are entitled to withdraw their respective shares of

compensation as apportioned by the learned Tribunal along with interest. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeals shall stand closed.

V.GOPALA KRISHNA RAO, J th 12 May, 2023 cbs
VGKR,J MACMA No.812 of 2013 HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO
M.A.C.M.A.No. 812 of 2013 12th May, 2023 cbs