

HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

MACMA No.1326 OF 2013

JUDGMENT:

1. M/s. Reliance General Insurance Co., Limited, represented by its Manager, Hyderabad, who is the 2nd respondent in the M.V.O.P. No. 513 of 2011, has preferred this appeal questioning the Judgment and decree dt.17.01.2013 in the M.V.O.P. passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Anantapur, (for short, "the tribunal"), not being satisfied with the quantum of compensation, whereby the Tribunal awarded compensation an amount of Rs. 10,95,000/- against respondents 1 to 3, directing the second respondent first pay and recover the same from the first respondent.
2. For convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.
3. The claimants had filed an application under Sections 140 and 166 of the Motor Vehicles Act, 1988, claiming compensation an amount of Rs.12,00,000/- for the death of Yekkaluru Ameer Basha, who is the son of claimants 1 and 2 and the brother of claimant No. 3, in a motor vehicle accident

that occurred on 30.01.2011. The said Ameer Basha would hereinafter be referred to as "the deceased".

4. The claimant's case is that on 30.01.2011 at about 8.20 a.m., the deceased Ameer Basha, riding the motorcycle with his friend as a pillion rider, started from the S.S.B.N. canteen to his house. When they reached Ambedkar circle at about 8.30 a.m., an auto bearing No. A.P. 02 X 7970 (hereinafter referred to as "the offending vehicle") was driven by its driver at high speed in a rash and negligent manner and dashed against the motorcycle, for which the deceased sustained injuries. Immediately, the deceased was shifted to the Government Hospital, Anantapur, for treatment. On the advice of the duty doctor, the claimants shifted the deceased to Bangalore for better treatment. However, the said deceased succumbed to death.
5. Respondents 1 and 3 have remained ex parte.
6. The second respondent, being the insurer of the offending vehicle, filed its counter, contending that the deceased had ridden the motorcycle without any driving licence by ignoring the vehicular traffic rules; the claim petition is bad for the non-joinder of necessary parties, as the owner and insurer of

the motorcycle are not added as parties to the claim petition. The driver of the offending vehicle was not holding a valid driving licence by the date of the accident, as the driving licence of the offending vehicle had expired.

7. Based on the pleadings, the Tribunal formulated appropriate issues. To substantiate the claim, on behalf of the claimants, P.Ws. 1 and 2 were examined, and Exs. A.1 to A.9 were marked, and on behalf of the respondents, R.Ws. 1 and 2 were examined, and Exs. B.1, X.1, and X.2 were marked. Based on the documentary evidence, the Tribunal awarded compensation at Rs.10,95,000/- against respondents 1-3. Still, the second respondent, the insurer, was directed to pay first and recover the same from the first respondent. Aggrieved by the same, the present appeal has been preferred.
8. I have heard the learned counsel for both parties.
9. The learned counsel for the appellant/second respondent contended that the second respondent has no liability to pay compensation, as the driving licence of the offending vehicle's driver had expired much prior to the accident. Still, the Tribunal erroneously fastened the liability on the second respondent with a direction to pay and recover the same from

the first respondent. It is further contended that, while granting compensation, the Tribunal erred in quantifying the compensation amount in assessing the notional earnings of the engineering student without following the principle laid down in **B.Ramulamma Vs. M/s.Venkatesh Bus Union and others**¹, though it was relied on by the Tribunal.

10.The learned counsel for the respondents 1 to 3/ claimants have supported the findings and observations of the Tribunal.

11.Having considered the contentions raised by the learned counsel appearing for both parties, this Court feels it necessary to determine the following points:

- I. Whether the tribunal is justified in fastening the liability on the second respondent and giving directions to pay and recover the compensation?
- II. Whether the compensation fixed by the Tribunal is just and reasonable?

POINT No. I:

- a. The findings of the Tribunal that the accident occurred due to the rash and negligent driving of the offending vehicle's driver and that the deceased succumbed to death from the injuries sustained in the accident are not disputed by the respondents.

¹2009 (3) LS 173 (D.B.)

It is also evident from Ex.A.1-copy of the F.I.R., Ex.A.2-copy of the altered F.I.R., Ex.A.3-copy of the inquest report, and Ex.A.4-copy of the postmortem examination report. The said findings have attained finality. The claimants' case with regard to the manner of the accident is not disputed by the respondents. The claimants are able to establish the said fact by adducing documentary evidence. The Tribunal has accepted the case of the petitioners and gave a finding as referred to above; this Court finds that the details of the accident and the evidence adduced regarding the manner of the accident need not be discussed.

- b. It is not in dispute that the appellant/ 2nd respondent has issued an insurance policy for the offending vehicle, and the same was in force as of the date of the accident and it is also evident from Ex.B.1-insurance policy. The second respondent denied the Ex.X.2-driving licence extract of the first respondent, who is the offending vehicle's driver. As per Ex.X.2, the offending vehicle's driver was holding a driving licence to drive auto rickshaw transport, valid from 16.09.2003 to 20.08.2006 and the Tribunal observed that the driving licence was not renewed in the Anantapur D.T.C. office. The accident in

question occurred on 30.01.2011. Thus the driver of the offending vehicle did not have a valid licence as of the date of the accident. The evidence of R.W.2 also shows that the licence was not renewed. Despite the service of notice in the claim petition, respondents 1 and 2, who are the driver and owner of the offending vehicle, have not chosen to contest the matter. They have not taken steps to prove that they renewed the licence in another D.T.C. office. The Tribunal observed that the driver held a driving licence previously, but he was not disqualified from obtaining a new licence or by renewing the licence. Though the said finding is correct, it cannot be concluded that the driver had a valid driving licence at the time of the accident.

- c. It is an admitted position of the fact that there was a breach of policy condition, and the fundamental duty is of the owner and driver to discharge the duty and to prove that the driver had a proper driving license to drive the vehicle in question involved in the accident. Hence, it was found that the owner had not proved that he had given the vehicle to a driver who possessed a license to drive the vehicle involved. The driver also did not step into the witness box. Hence it is presumed that the driver

did not adduce any oral or documentary evidence to prove that he had a driving license. The onus could not be shifted to the insurance company. Just because the vehicle was insured with the appellant insurance company, it cannot be made liable unless it is proved that there was no violation of the policy condition.

d. In **Shamanna and another Vs. Divisional Manager, The Oriental Insurance Company Limited and others**² in the facts of the case that the jeep driver had no valid driving license at the time of the accident. There was a violation of the insurance policy's terms; the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle. In which the Apex Court observed paragraphs 7 and, 8, 12 as follows:

“7 As per the decision in the Swaran Singh case, the onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was a breach of policy conditions. Where the driver did not possess a valid driving licence, and there is a breach of policy conditions, "pay and recover" can be ordered in case of third-party risks. The Tribunal is required to consider whether the owner has taken reasonable care to find out whether the driving licence produced by the driver does not fulfil the

²Civil Appeal No.8144 of 2018 (arising out of S.L.P. (C). No.26955 of 2017)

requirements of law or not will have to be determined in each case.

8. *The Supreme Court considered the decision of the Swaran Singh case in the subsequent decision in National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700, wherein this Court held that "the decision in Swaran Singh case has no application to cases other than third party risks and in case of the third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured". The same principle was reiterated in Prem Kumari v. Prahlad Dev and others (2008) 3 SCC 193.*

9.....

10....

11....

12.....*since the reference to the larger Bench in the Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently, the decision in the Swaran Singh case followed in Laxmi Narain Dhut, and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and, after that, recover the same from the owner of the vehicle in question, is in accordance with the Judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned Judgment of the High Court exonerates the insurance company from its liability. It directs the claimants to recover the compensation from the owner of the vehicle is set aside, and the award passed by the Tribunal is restored."*

- e. In view of the above settled legal position, this Court views that the insurance company can be directed to pay the compensation amount at the first instance and then recover the same from the owner of the offending vehicle as pay and recover can be ordered in case of third party risk. Hence, the Tribunal is

justified in fastening the liability on the second respondent and giving directions to pay and recover the compensation from the owner. Accordingly, this point is answered.

POINT No.II:

- a. Admittedly, claimants 1 and 2 are the parents and the claimant. No.3 is the deceased's brother. It is also not in dispute that the deceased was aged about 19 years and studying first-year B.Tech at the time of the accident. Ex.A.7-original intermediate marks list, Ex.A.8-original E.A.M.C.E.T. hall ticket for engineering 2010 and Ex.A.9-original identity card of Anantha Lakshmi Institute of Technology and Sciences. As rightly contended by the appellant's counsel, the Tribunal has referred the Judgment of the Division Bench of this Court in **B.Ramulamma's case** referred to supra, wherein the income of the B.E. graduate was taken as Rs.12,000/- per month. Admittedly, in the case on hand, the deceased was studying first-year B.Tech at the time of the accident. Following the principle laid down by the Division Bench of this Court referred to supra, since the deceased was studying first-year B.Tech, this Court inclined to consider the notional income of the deceased at Rs.6,500/- per month.

- b. In **National Insurance Company Limited v. Pranay Sethi and others**³ the Apex Court observed that where the deceased was a bachelor, and the claimants are the parents, the deduction follows a different principle. Regarding a bachelor's, usually, 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself. It is further observed that taking into consideration the cumulative factors, namely, the passage of time, the changing society, escalation of price, the change in the price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards prospects.
- c. By following the principles laid down by the Apex Court, this Court considers that 50% of the income is to be deducted towards personal expenses and 40% of the income to be added towards future prospectus. This Court considers the monthly earnings, including prospects, at Rs.9,100/- (6,500 + 2,600). Out of which, deducting 50% of the income, the loss of monthly earnings arrived at Rs.4,550/-.

³(2017) 16 SCC 680

d. As far as the application of multiplier is concerned, the Tribunal, while calculating the loss of earnings, considered the age of the second claimant, the deceased's mother. In similar circumstances, a three-Judge bench of the Apex Court, in **Royal Sundaram Alliance vs Mandala Yadagari Goud**⁴ by referring to the principles laid down in **Sube Singh v. Shyam Singh**⁵ and **Reshma Kumari v. Madan Mohan**⁶, it was categorically taken the view that the age of the deceased and not the age of the parents would be the factor to take the multiplier to be applied. The relevant portion of the Judgment, in paragraphs 11 to 13, is extracted hereunder:

"11.....the loss of dependency is thus stated to be based on: (i) additions/ deductions to be made for arriving at the income; (ii) the deductions to be made towards personal and living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect of significance, and Reshma Kumari (supra) categorically states that it does not want to re-visit the law settled in Sarla Verma on this behalf.

12....the Constitution Bench in National Insurance Company Ltd., V. Pranay Sethi 2017 ACJ 2700 (S.C.) has also been referred to in Sube Singh v. Shyam Singh 2018 ACJ 737 (S.C.).

13.....there is no need to take up this issue settled by the aforesaid judgments of the three-Judge Bench and also relying upon the Constitution Bench that it is the age of

⁴2019 ACJ 1644

⁵2018 ACJ 737 (S.C.)

⁶2013 ACJ 1253 (S.C.)

the deceased which has to be taken into account and not the age of the dependents."

- e. By following the principles laid down by the Apex Court in Roy-al Sundaram's case (**supra1**), Sube Singh's case (**supra2**), and Reshma Kumari's case (**supra3**), this Court views that the Tri-bunal wrongly took the age of the deceased's mother in deter-mining the loss of earnings of the deceased.
- f. To assess the loss of earnings, this Court relied on the Judgment of the Apex Court in **Sarala Verma v. Delhi Transport Corporation**⁷ in which the Apex Court provided the table of the multiplier to be considered for the claims made under Section 166 of the Motor Vehicles Act. Hence, the multiplier for the persons aged between 15 and 20 is pro-vided as '18'. The loss of dependency would arrive at an amount of Rs.9,82,800/-(4,550 x 12 x 18).
- g. Insofar as the award of compensation under conventional heads is concerned, the Tribunal awarded Rs.10,000/- to-wards loss of estate and Rs.5,000/- towards funeral expens-es. However, the Apex Court in **Pranay Sethi's** case awarded a total sum of Rs.70,000/- under conventional heads, namely,

⁷2009 ACJ 1298

loss of estate, loss of consortium, and funeral expenses. It was further held that the sum should be enhanced at 10% every three years. It was held thus in Paragraph 61:

"(viii) Reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

h. In **Magma General Ins. Co. Ltd., v. Nanu Ram**⁸, at paragraph 8, the Apex Court held that:

"(8.6)...the Motor Vehicles Act is beneficial and welfare legislation. The Court is duty-bound and entitled to award just compensation, irrespective of whether any plea on that behalf was raised by the claimant.

(8.7) A Constitution Bench of this Court in Pranay Sethi, 2017 ACJ 2700 (S.C.), dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is the loss of consortium.

In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', parental consortium', and filial consortium.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh v. Rajbir Singh 2013 ACJ 1403 (S.C.).

The parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training.

The filial consortium is the right of the parents to compensate in the case of the accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during

⁸2018 ACJ 2782

their lifetime. Children are valued for their love, affection, companionship and their role in the family unit."

- i. The Judgment in **Pranay Sethi's** case was rendered in the year 2017. Therefore, the claimants are entitled to a 10% enhancement of conventional heads. In all, the claimants are entitled to the compensation as detailed below:

Towards loss of dependency	Rs.9,82,800/-
Towards funeral expenses	Rs. 16,500/-
Towards loss of estate	Rs. 16,500/-
Towards filial consortium	Rs. 80,000/-
	(40,000/- each claimant 1 and 2)

Total:	Rs.10,95,800/-

- j. In view of the above, this Court views that the compensation awarded by the Tribunal is just and reasonable. Accordingly, this point is answered.

12. As a result, the appeal is dismissed. No costs.

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

T. MALLIKARJUNA RAO, J

Dt.30.12.2022
BV