

Telangana High Court

National Insurance Co Ltd., ... vs Bade Swaroopa, Medak Dist 5 Others on 10 April, 2023

Bench: Namavarapu Rajeshwar Rao

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RRN, J

COMMON JUDGMENT IN  
MACMA NOS.1477 OF 2015 & 2945 OF 2019

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A No.1477 OF 2015

&

M.A.C.M.A No.2945 OF 2019

COMMON JUDGMENT:

Both these Motor Accidents Civil Miscellaneous Appeals are being disposed of by way of this common judgment as both these appeals are directed against the judgment dated 17.01.2014 in O.P No.188 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Siddipet (Hereinafter referred to as 'the Tribunal').

2. In M.A.C.M.A No.2945 of 2019 the Appellants/Claimants had challenged the judgment with regard to the quantum of compensation and prayed to enhance the same and in M.A.C.M.A No.1477 OF 2015 the Respondent No.2/Insurance

Company had challenged the judgment by contending that the Tribunal failed to consider the contributory negligence leading to the accident; and prayed to the set-aside the same.

3. For the sake of convenience, the facts in M.A.C.M.A No.2945 of 2019 are discussed hereunder and the parties are hereinafter referred to as they were arrayed before the Tribunal.

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4. Brief facts of the case are that on 20.07.2011 at about 9.00 p.m. one Bade Yadagiri (the deceased), after completing his duty, was returning to Marpadaga Village on his bike bearing No.AP23-A-9948 and when he reached in front of Maithri Vanam near Sabitha Petrol bunk, the Crime Vehicle lorry bearing No.AP16- TU-394 was parked on the road without any indicators i.e. parking lights or radium stickers and due to the focus and strong lights from opposite coming vehicles, unable to see the crime vehicle, the deceased dashed the parked lorry from behind and due to that he received a severe head injury and died on the spot. The accident occurred due to negligence on the part of the driver of the crime vehicle as he failed to take precautions like indicators, parking lights etc. Hence, the petitioners filed the claim petition claiming compensation of Rs.9,00,000/- on account of the death of the deceased.

5. The 1st respondent remained ex-parte and the 2nd respondent filed counter denying the petition allegations and contested the matter.

6. On behalf of the petitioners, PWs 1 to 3 were examined and got marked Exs.A1 to A6. On behalf of respondent No.2, RW.1 was examined and got marked Exs.B1 and B2.

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7. On appreciation of the evidence on record, the Tribunal allowed the claim petition in part granting a sum of Rs.8,22,000/- towards compensation. Aggrieved by the same, the present appeals are filed as stated supra.

8. Heard both sides. Perused the record.

9. Learned counsel appearing for the petitioners would contend that the Tribunal erred in awarding a meagre amount as compensation and also erred in considering the wrong age group of the deceased and prayed to allow the appeal by enhancing the compensation under various heads as per the present law.

10. On the other hand, the learned counsel appearing for respondent No.2 had contended that the Tribunal failed to consider that there was contributory negligence on the part of the deceased, and the income of the deceased was taken on the higher side and inter alia contended that the judgment of the Tribunal cannot be sustained and is liable to be set aside.

11. It is seen from the impugned judgment that the Tribunal elaborately discussed the aspect of negligence and has rightly come to the conclusion that the driver of the crime vehicle acted in a negligent manner and was solely responsible for the death of the deceased and as such, invoking the principle of vicarious liability, 4 RRN,J COMMON JUDGMENT IN MACMA NOS.1477 OF 2015 & 2945 OF 2019 the owner of the crime vehicle is liable to pay compensation to the claimants and the 2nd respondent/Insurance Company, being the insurer of the crime vehicle is also liable to pay the

same. The contention of the learned counsel for respondent No.2 that the Tribunal did not consider the rough sketch of the scene of offence which shows that the vehicle was parked towards left side, is not acceptable as it is clearly seen from the sketch that the crime vehicle was not parked towards the extreme left and it is observed from the evidence that the driver of the crime vehicle did not take any measures for safe parking. Thus, no interference is required with the issue of negligence.

12. Coming to the grievance of the petitioners that the compensation awarded to them by the Tribunal was meager, it is noticed that the Tribunal did not calculate the loss of dependency correctly. Exs.A3 and A6 reveal that the age of the deceased was 28 years at the time of the accident and the same is to be considered. Further, the petitioners are entitled to compensation under conventional heads as per the decision of the Hon'ble Apex Court in National Insurance Company Limited vs Pranay Sethi and others 1and Magma Insurance Company Ltd. Vs. Nanu Ram @ (2017) 16 SCC 680.

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Chuhru Ram 2. However, this court is not inclined to interfere or alter the finding of the Tribunal that the deceased was earning Rs.5,500/- per month as the Tribunal was considerate enough to assess the income of the deceased as stated above despite there being no material placed before it by the petitioners that the deceased was working as a driver and earning Rs.10,000/- per month. However, future prospects are to be added to the income of the deceased.

13. The Tribunal awarded Rs.8,22,000/- towards compensation to the petitioners under various heads and the same is interfered with in the manner as hereunder:

| Head                        | Amount                                                      |
|-----------------------------|-------------------------------------------------------------|
| Loss of dependency          | Rs. 12,56,640/-<br>(Rs.5,500/- + 40% - 1/5thx 12 x 17)      |
| Loss of Spousal Consortium  | Rs.44,000/- (Rs.40,000/- + 10%)                             |
| Loss of Estate              | Rs.16,500 (Rs.15,000/- + 10%)                               |
| Funeral expenses            | Rs.16,500 (Rs.15,000/- + 10%)                               |
| Loss of Parental Consortium | Rs.80,000/- (Rs.40,000/- each<br>to petitioners No.2 and 4) |
| Loss of Filial Consortium   | Rs.40,000/-                                                 |
| Total                       | Rs. 13,45,640/-                                             |

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14. Thus, the petitioners are entitled to the enhanced compensation of Rs. 13,45,640/- as against the awarded amount of Rs.8,22,000/-. Though the claim of the petitioners is Rs.9,00,000/- only, invoking the principle of just compensation, and in view of the law laid down by the Hon'ble Supreme Court in Rajesh vs. Rajbir Singh 3, and in a catena of decisions, this Court is empowered to grant compensation beyond the claimed amount. However, the petitioners shall pay the deficit Court fees on the enhanced compensation.

15. Accordingly, M.A.C.M.A No. 2945 of 2019 is allowed, enhancing the compensation from Rs.8,22,000/-to Rs.13,45,640/- (Rupees Thirteen Lakh, Forty Five Thousand, Six Hundred and Forty only) with interest at the rate of 7.5% p.a. from the date of petition till the date of realization. The respondents shall deposit the same after giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. Likewise, the petitioners are directed to pay the deficit Court fee within a period of (01) month from the date of receipt of a copy of this judgment. The compensation amount shall MANU/SC/0480/2013.

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be apportioned among the petitioners in the same manner and ratio as ordered by the Tribunal. There shall be no order as to costs. M.A.C.M.A NO. 1477 OF 2015 In view of the findings in M.A.C.M.A No. 2945 of 2019, the M.A.C.M.A No. 1477 of 2015 filed by the 2nd respondent/Insurance Company is liable to be dismissed.

Accordingly, the M.A.C.M.A No. 1477 of 2015 is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

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NAMAVARAPU RAJESHWAR RAO, J 10th  
day of April, 2023.

PNS/BDR