***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ M.A.C.M.A.No.3466 OF 2011

% 25—09—2023

Omprakash Dodiya

…Appellant

vs.

$ Ravindra Sai and another

… Respondents

!Counsel for the Appellant : Sri C.Vikram Chandra

^Counsel for Respondent No.2: Sri N.S.Bhaskar Rao

<Gist :

>Head Note :

? Cases referred

1. 2004 (3) SCC 297
2. 2018 (9) (SC) 3726
3. 2008 (2) SCJ 470
4. 2008 (1) AJR 192
5. 2004 (3) SCC 297
6. (2011) 13 SCC 236
7. 2017 ACJ 2700
8. 2009 ACJT 1298 (SC)
9. 2022 Live Law (SC) 821

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

M.A.C.M.A.No.3466 OF 2011

Between:

Omprakash Dodiya

...Appellant

and

Ravindra Sai and another

... Respondents

JUDGMENT PRONOUNCED ON: 25.09.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A.No.3466 OF 2011

JUDGMENT:

Being not satisfied with the quantum of compensation awarded and the exoneration of the 2nd respondent-Insurance Company from the liability of paying the compensation vide award and decree dated 17.03.2009 passed in O.P.No.2663 of 2006 on the file of the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short "the court below"), the appellant/petitioner preferred the present appeal.

2. For convenience, the parties hereinafter will be referred to as they are arrayed before the Court below.

3. Brief facts of the case are that on 22.05.2005 at about 2.15 a.m. while the petitioner and his friends were coming on a motorcycle from Palace Heights Hotel to Agapura, and when they reached Abids X roads, one DCM Van bearing No.AP-07-TT-0996 driven by its driver rashly

and negligently,, dashed against the motor cycle. As a result, the petitioner sustained a grievous head injury and was immediately shifted to the NIMS Hospital for treatment. The Police Abids has registered a case against the driver of the offending vehicle. At the time of the accident, the petitioner was working as an Accountant-cum-Godown Incharge and was earning Rs.8,000/- per month. Due to the head injury and other injuries all over the body, the petitioner was unable to recognize his family members; he underwent a major operation and spent Rs.3,00,000/- towards medical expenses and treatment. Therefore, the petitioner filed the O.P. against the respondents seeking compensation of Rs.10,00,000/-.

4. Before the court below, the 1st respondent remained ex-parte. The 2nd respondent filed a counter denying all the averments made in the claim petition.

5. To prove the petitioner's case, PWs.1 to 4 were examined and Exs.A1 to A14 and Exs.X-1 and X-2 were marked. On behalf of the respondents, RW.1 was examined and Exs.B-1 to B-3 were marked.

6. After considering the oral and documentary evidence available on record, the Court below awarded an amount of Rs.3,45,000/- with interest @ 7.5% per annum from the date of petition till the date of realization to be paid by respondent No.1 alone and the claim against the 2nd respondent was dismissed. Challenging the said order, the petitioner has filed the present appeal.

7. Learned counsel appearing for the petitioner contended that the court below erred in not assessing the compensation as per the Second Schedule of the M.V.Act and thus awarded meager compensation to the petitioner. The court below failed to take into consideration the evidence relied on by the petitioner with regard to his earnings from the employment and it failed to appreciate the oral and documentary evidence placed before it while assessing and awarding the compensation. The court below failed to appreciate the evidence of the doctor, who was examined as PW.4, and the court below failed to take into consideration the disability certificate issued by the NIMS Hospital. The Court below has not awarded just

compensation under other heads and therefore, the amount awarded by the court below is very meager and unjustifiable.

8. Learned counsel appearing for the petitioner further contended that the court below ought to have considered that even if there is any violation of policy terms and conditions committed by the owner of the vehicle, the court below ought to have directed the Insurance Company initially to pay the compensation to the 3rd parties and to recover the same from the owner of the offending vehicle. He relied upon the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited vs Swaran Singh & others.***[1] He also relied upon the judgment of the Hon'ble Supreme Court in ***Shamanna V. Divisonal Manager, the Oriental Insurance Co. Ltd.***[2]

9. Learned counsel for respondent No.2/Insurance Company contended that since the 1st respondent has violated the terms and conditions of the

[1] 2004 (3) SCC 297
[2] 2018(9) (SC) 3726

insurance policy, the court below was justified in dismissing the claim against the 2nd respondent. Accordingly, prayed to dismiss the appeal.

10. Upon bare reading of the impugned order, it is observed that the court below found that the 2nd respondent/Insurance Company is not liable to pay compensation. In the case on hand, there is no dispute that the policy was not in force as of accident date. The Hon'ble Supreme Court in ***Swaran Singh*** *(supra)* and in the catena of decisions directed the Insurance Company to pay the compensation, and liberty is granted to it to recover the paid amount from the owner of the vehicle in case of violation of the conditions of the Insurance Policy. In ***Shamanna*** (supra) the Hon'ble Supreme Court held as under:

> *11. In the present case, to deny the benefit of 'pay and recover', what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in National Insurance Co. Ltd. v. Parvathneni and another (2009) 8 SCC 785 which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of*

India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni case, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that "if the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle". The above reference in Parvathneni case has been disposed of on 17.09.2013 by the three-Judges Bench keeping the questions of law open to be decided in an appropriate case."

12. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in 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 thereafter, 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 exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

13. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224 where this Court held that "….that for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

11. Applying the above decisions to the present case, this Court is of the view that the 2nd respondent/Insurance Company can be directed to pay the compensation amount

to the petitioner and recover the same from the respondent No.1 as it is established that the policy issued by the 2nd respondent in favour of the 1st respondent was very much in force as on the date of the accident.

12. Before the court below, learned counsel for the 2nd respondent submitted that since the 1st respondent violated the terms and conditions of the insurance policy, the 2nd respondent is not liable to pay compensation to the petitioner. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in ***NEW INDIA ASSURANCE COMPANY LIMITED Vs. PRABHU LAL***[3] and also the judgment of the Madras High Court in ***ASIRVATHAM AND OTHERS Vs. G.CHANDRASEKARAN AND ANOTHER***[4]***.***

13. With regard to fixing liability, the Court below held as follows :-

> 18. It is evidence of R.W.1 that the crime vehicle is goods carry vehicle and the driver possessed LMV non transport and so R1 violated the terms and

[3] 2008 (2) SCJ 470
[4] 2008 (1) AJR 192

conditions of the insurance policy and thereby they are not liable to pay compensation to the claimant. In support of the argument he submitted two decisions reported in ***1) 2008 (1) AJR 192 Madras High Court in between Asirvatham and others vs. G.Chandrasekaran and another and 2) 2008 (2) SCJ 470 in between New India Assurance Company Limited vs. Prabhu Lal.*** Advocate for the petitioner argued that the petitioner is a third party and so both the decisions have no application.

19. Admittedly one K.Ravinder was the driver of the DCM van on that day and at the time of accident. Ex.B.3 is the R.C extract of the said vehicle where the crime vehicle is goods carriage-LMV. Ex.B2 is the driving licence extract in the name of the said Ravindra who possessed LMV non transport. In the first decision, the driver of the vehicle possessed driving licence for driving heavy passenger vehicle and not possessed D.L for driving heavy goods vehicle. But the vehicle involved in the accident is a lorry which is heavy goods vehicle. So, the tribunal gave finding that there is a breach of terms of the insurance and as such insurance company shall not liable to pay the compensation payable by the owner of the vehicle. When the matter went before the Hon'ble High Court of Madras, the order of the

tribunal confirmed and dismissed the appeal for the order against the insurance company and modified the order enhanced the compensation to some extent. In the second decision, it is held that one Mohd.Julfikar was driving the vehicle at the time of accident who possessed D.L for LMV and not possessed any driving licence for light goods carriage vehicle and so it is held that a light motor vehicle cannot always mean light goods carriage and accordingly confirmed the order of the lower court and set aside the order of the appellant court tagging the liability on insurance company. So, both these decisions directly applicable and helpful in this case. Hence, R2 is not liable to pay the compensation awarded and the awarded compensation shall be payable by R1 alone."

14. Learned counsel appearing for the 2nd respondent relied upon the judgment of the Hon'ble Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs. SWARAN SINGH[5],*** wherein the Hon'ble Apex Court held as follows :-

"WHEN THE PERSON HAS BEEN GRANTED LICENCE FOR ONE TYPE OF VEHICLE BUT AT THE RELVANT

[5] 2004 (3) SCC 297

TIME HE WAS DRIVING ANOTHER TYPE OF VECHILE :

84. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

85. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-sectionh (2) of Section 10. They are `goods carriage', `heavy-goods vehicle', `heavy passenger motor-vehicle', `invalid carriage', `light motor-vehicle', `maxi-cab',`medium goods vehicle', `medium passenger motor-vehicle', `motor-cab', `motorcycle', `omnibus', `private service vehicle', `semi-trailer', `tourist vehicle',

`tractor', `trailer', and `transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for `motorcycle without gear', for which he has no licence. Cases may also arise where a holder of driving licence for `light motor vehicle' is found to be driving a `maxi-cab', `motor-cab' or `omnibus' for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

86. We have construed and determined the scope of sub-clause (ii) of sub- section(2) of section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and

inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

87. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court.

15. In the present case, the crime vehicle is a goods carrier vehicle, and the driver possessed LMV (non-transport). So, the 1st respondent has violated the terms and conditions of the insurance policy. In view of catena of decisions of the Hon'ble Apex Court, as discussed above, the Insurance Company has to pay the entire amount to the petitioner and recover the same from the vehicle's owner.

16. With regard to the income of the petitioner, the petitioner stated that he was working as an Accountant in Ambika Steels and was earning Rs.5,000/- per month and also earning Rs.3,500/- per month by steel loading and

unloading and Ex.A-13 is the Salary Certificate. But, no authenticated document is filed in support of the said contention. As per Ex.A-12-Income Tax Bill during the financial year from 01.04.2002 to 31.03.2003, wherein the total income noted as Rs.50,000/- and no tax was paid. As per Ex.A-12, the salary was shown as Rs.36,000/- and another amount Rs.26,000/- as sales commission. The second Saral form is for the financial year 2000-01 where the total income was shown as Rs.51,000/- and an amount of Rs.100/- was paid towards tax. So, the income as stated by the petitioner (i.e., Rs.5,000/- + Rs.3,500/-) is not believable. The court below held that the injured is a private employee and when he is an Accountant there will not be any separate salary for the loading and unloading. The minimum wage of a labout is Rs.3,000/-. The court below observed that the earnings of the injured ranging from Rs.3,500/- to Rs.4,000/- cannot be ruled out and fixed the income of the petitioner in between Rs.3,500/- to Rs.4,000/-, which is meager. In the changed circumstances, even a coolie is getting a monthly income of

Rs.4,500/-. Therefore, as per the decision of the Hon'ble Apex Court in ***RAMCHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED***[6], this Court is inclined to fix the monthly income of the petitioner at Rs.4,500/-. As per ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS***[7]**,** to this, 40% is to be added towards future prospects, which comes to Rs.6,300/- (Rs.4,500/- + Rs.1,800/-) and the annual income would come to Rs.75,600/- (Rs.6,300/- x 12)**.** At the time of the accident, the age of the petitioner is 26 years. As per the decision of the Apex Court in ***SARLA VERMA Vs. DELHI TRANSPORT CORPORATION***[8], the appropriate multiplier applicable for the age of the petitioner is 17. The petitioner stated that he has sustained 50% disability and to that effect, he has produced Ex.X-2-Disability Certificate. Therefore, this Court is fixing the disability at 50% and the petitioner is entitled to Rs.6,42,600/- (Rs.75,600 X 17 X 50%) towards disability. The court below awarded an amount of

[6] (2011) 13 SCC 236
[7] 2017 ACJ 2700
[8] 2009 ACJT 1298 (SC)

Rs.70,000/- towards medicines and extra nourishment and Rs.20,000/- towards pain and suffering. This Court is granting another sum of Rs.10,000/- in addition to the amount of Rs.90,000/-. Therefore, the petitioner is entitled to a sum of Rs.1,00,000/- towards medicines, extra nourishment and for pain and suffering. The petitioner is entitled to an amount of Rs.5,000/- towards transportation charges. The petitioner stated that he was hospitalized for a period of 14 months. Therefore, the petitioner is entitled to a sum of Rs.63,000/- (Rs.4,500/- X 14) towards loss of earnings.

17. Learned counsel appearing for the petitioner submits that the monthly income of the petitioner may be fixed at Rs.25,000/- per month. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in ***GURPREET KAUR AND OTHERS Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND OTHERS***[9], wherein the Hon'ble Apex Court held as follows :-

[9] 2022 Live Law (SC) 821

"6. Keeping in mind the rate at which EMI was being paid, the Tribunal held that the deceased must be earning at least Rs. 25,000/- per month prior to his death in the accident. After taking ¼th of monthly income of the deceased towards personal expenses, the Tribunal applied multiplier of 18 and assessed the total compensation as Rs. 43,75,000/-. The High Court, unfortunately, overlooked the factors relied upon by the Tribunal to assess the monthly income of the deceased at Rs. 25,000/- per month. The High Court came to the conclusion that the mere fact that the deceased had paid instalments of the loan could not itself be an evidence that the money actually represented his income or can form the basis for assessment of income of the deceased at Rs. 25,000/- per month. Taking into consideration the Notification issued by the State of Haryana, fixing minimum wage at the relevant time, the High Court assessed the income of the deceased at Rs. 7,000/- per month, and on this premise, as stated above, the compensation was reduced.

7. *We have heard learned counsel appearing on behalf of the parties and carefully perused the material placed on record.*

8. *Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the*

testimony of P.W.4 – Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased – Pyara Singh was regularly making the payment of Rs. 11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs. 50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs. 11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs. 25,000/- per month."

18. In the above case, the monthly income is calculated on the basis of EMIs paid by the deceased. But, in the present case, there are no EMIs paid and the petitioner has only produced his Salary Certificate. Therefore, the said judgment is not applicable to the case on hand.

19. The Court below has rightly awarded the rate of interest at 7.5% per annum, which needs no interference by this Court.

20. In all, the petitioner is entitled to a compensation of Rs.8,10,600/-.

21. Accordingly, the M.A.C.M.A is partly allowed and the compensation amount awarded by the court below is enhanced from **Rs.3,45,090/-** to **Rs.8,10,600/-** (Rupees eight lakhs ten thousand six hundred only) with interest @ 7.5 % p.a. from the date of petition till the date of realization. The 2nd respondent is directed to deposit the said amount with costs and interest within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is permitted to withdraw the same. The 2nd respondent/Insurance Company is at liberty to recover the amount from the 1st respondent/owner of the vehicle in accordance with law. There shall be no order as to costs.

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

NAMAVARAPU RAJESHWAR RAO, J

25th September, 2023
L.R. copy to be marked
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