

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

+ M.A.C.M.A. No. 3943 OF 2014
&
M.A.C.M.A.No. 4264 OF 2014

Between:

A. Vara Laxmi & others

....Appellants/petitioners

Vs.

\$ V.Markandeyulu & and another

.... Respondents/Respondents

JUDGMENT PRONOUNCED ON: 22.09.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

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A. Vara Laxmi & others

....Appellants/petitioners

Vs.

\$ V.Markandeyulu & and another

.... Respondents/Respondents

! Counsel for the petitioner : Sri Kasireddy Jagathpal Reddy

Counsel for the Respondent No.2: A. Ramakrishna Reddy

<Gist :

>Head Note:

? Cases referred:

1. (2017) 16 SCC 680
2. (2009) 6 SCC 121
3. 2018 Law Suit (SC) 904

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A No.3943 OF 2014

&

M.A.C.M.A No.4264 OF 2014

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 award dt.25.06.2014 in O.P. No.2406 of 2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge, City Civil Courts, Hyderabad (Hereinafter referred to as 'the Tribunal').

2. In M.A.C.M.A No.3943 of 2014, the Appellants/petitioners have challenged the award being aggrieved by the quantum of compensation and prayed to enhance the same. In M.A.C.M.A No.4264 of 2014, the Appellant/Insurance Company had challenged the Award and prayed to set aside the same.

3. For convenience, the facts in M.A.C.M.A No.3943 of 2014 are discussed hereunder, and the parties hereinafter will be referred to as they are arrayed before the Tribunal.

4. Brief facts of the case are that on the intervening night of 16/17.5.2010 at about 2.30 a.m. near Kharkhana Secunderabad Main road, opposite G. Pulla Reddy Sweet Shop, Trimulgherry, Secunderabad, the deceased A. Lova Raju was proceeding as a pillion rider and Markandeyulu was riding the Bajaj Pulsar Motorcycle bearing No.AP-10-T/R-1646 as they were returning from Macha Bollaram side towards Kharkhana side, and when they reached near G. Pulla Reddy Sweet shop, Karkhana, at the same time, the rider of the said Pulsar Motorcycle drove the same with high speed in a rash and negligent manner and dashed the road divider. Due to the sudden impact, the deceased fell down from the motorcycle, and the deceased sustained fatal injuries, and he succumbed to injuries on the same day while undergoing treatment at Gandhi Hospital, Hyderabad. The Police of Karkhana have registered a case in Cr.No.96 of 2010 under Sections 304 and 337 IPC against the rider of the crime vehicle. Accordingly, filed a claim petition claiming compensation of Rs.25,00,000/-.

5. Before the Tribunal, respondent No.1 remained ex parte. Whereas respondent No.2 filed a Written Statement denying the averments of the petition. They contended that the rider of the Pulsar Motorcycle bearing No.AP-10-T/R-1646

was not holding a valid driving license at the time of the alleged accident, and he was not qualified for holding or obtaining such driving license. Further, he still needs to satisfy the requirements of Rule No.3 of the Central Motor Vehicles Rules, 1989. One can drive the motorcycle if he should have an MCWG license, but the rider of said Pulsar did not possess a valid and effective driving license as on the date of the accident. Accordingly, prayed to dismiss the claim petition.

6. To prove their case, on behalf of the petitioners, PWs.1 to 3 were examined and got marked Exs.A1 to A5. On behalf of respondent No.2, RW.1 was examined and got marked Ex.B1 to B3.

7. After considering the claim and the Written Statement filed by respondent No.2, and on evaluation of the evidence, both oral and documentary, the Tribunal has found that there was contributory negligence on the part of the deceased @ 25% and remaining 75% on the part of the rider of the motorcycle, and allowed the O.P. partly awarding compensation of Rs.12,39,000/- and deducted 25% of contributory negligence on the part of the deceased i.e. at Rs.3,09,750/- and rest of the amount i.e. Rs.9,29,250/- with

interest at 7% per annum payable by the respondents jointly and severally was awarded to the petitioners. Dissatisfied with the quantum of compensation, the petitioners filed the present appeal.

8. Heard both sides. Perused the record.

9. Learned counsel for the petitioners contended that the Tribunal was not justified in fastening contributory negligence against the deceased to the extent of 25% by observing that the rider of the motorcycle, pillion rider, and another person accompanied the due. Thus, three persons were riding on the motorcycle at the time of the accident. He further contended that the Tribunal erred in fixing the income of the deceased @ Rs.6,000/- per month despite the fact that the deceased used to work in Kalaniketan, a reputed textile outlet and earn Rs.10,000/- per month as a salesman and had a bright future in the said organization and in order to substantiate these contentions, the petitioners also examined PW.3, who categorically deposed in his evidence that they used to pay a monthly net salary of Rs.7,090/- to the deceased. The Tribunal, brushing aside Ex.A5/salary certificate, assessed the deceased's salary at Rs.6,000/- per month. He relied upon the judgment of the Hon'ble Supreme Court in **Mohammed**

***Siddique and another Vs. National Insurance Co. Ltd.,
and others¹.***

9(1) Learned counsel for the petitioners further contended that the Tribunal ought to have deducted 1/4th from the income of the deceased for calculation purposes instead of 1/3rd, which is contrary to law, and that the Tribunal ought to have awarded Rs.1,00,000/- each towards loss of consortium to the widow, and loss of estate each Rs.5,000/-. He further contended that the Tribunal should not have deducted a sum of Rs.3,09,750/- being the 25% of the contributory negligence from out of the compensation amount arrived at Rs.12,39,000/-. Accordingly, prayed to allow the appeal.

10. Learned counsel for respondent No.2 has contended that they have no liability to pay compensation to the petitioner as the driver of the insured vehicle did not have the license to drive the motorcycle and plying the vehicle without valid registration. The Tribunal failed to appreciate the fact that a specific plea of the Insurance Company that the driver did not have the license to drive the insured vehicle and to prove the said fact, it had filed Ex.B1 and B3 i.e. letter and

¹ 2020(1) ALD 231(SC)

notice issued to the insured, wherein the insured was requested to produce the driving license. In spite of receipt of the notice, neither the owner appeared before the Court nor produced the license. He further contended that the Tribunal failed to appreciate that it also sent a summons to the address given by the insured at the time of obtaining the policy, and the same were returned. Therefore, an adverse inference can be drawn that the motorcycle rider did not have any license at all. But, the Tribunal, without considering Ex.B2 and B3 and summons sent through Court, erroneously passed the award, fastening the liability on par with the insured is bad and order of the Tribunal is liable to be set aside.

10(1) Learned counsel for respondent No.2 has further contended that the insured vehicle was plying without valid registration. It is clear violation of Section 39 of M.V. Act. Since the insured has violated the policy's terms and conditions, the insurer can avoid liability to pay compensation as per Sec.149(2) of the M.V. Act. He vehemently argued that the Insurance Company examined its official as RW.1 and exhibited Ex.B1 to B3 and pleaded and proved the case beyond reasonable doubt that the driver had no valid driving license at the time of the alleged accident and the vehicle was plying

without valid registration. He further contended that the Tribunal ought to have taken the notional income at Rs.4,500/- per month, but taking the income at Rs.6,000/- per month is excessive. Accordingly, prayed to dismiss the appeal filed by the petitioners.

11. As regards the contention of learned counsel for respondent No.2/Insurance Company that the driver of the insured vehicle did not have the license to drive the motorcycle and plying the vehicle without valid registration, the Tribunal had discussed this contention that the Insurance Company did not file any proof that the driver of the insured vehicle did not have the license to drive the motorcycle and plying the vehicle without valid registration and it further observed that Ex.A2-chargesheet shows that the accused was not charged for any of the violation under the M.V. Act. On the other hand, he is only charged for the offence under Section 304-A and 337 IPC. The Tribunal also observed that Ex.B2 is the letter issued to respondent No.1 and Ex.B3 is the office copy of the notice issued to the driver of the vehicle for the production of the documents along with the postal receipt, but there is no proof that they acknowledged these two letters. Therefore, in the absence of any proof filed by respondent No.2, the contention

made by respondent No.2 for Ex.B2 and B3 were served on the addresses mentioned thereon was not accepted. Hence, the Tribunal has rightly rejected the contention of learned counsel for respondent No.2/Insurance Company, and no interference is required in this behalf.

12. Coming to the deceased's earning capacity, the petitioners contended that the deceased was working in M/s Kalaniketan as a salesman and used to earn Rs.10,000/- per month as salary. To corroborate the same, the petitioners have examined PW.3, who is H.R. Manager at Kalaniketan Textiles & Jewellers Pvt. Ltd., Somajidguda, and he deposed that the deceased, during his lifetime, worked as Pattu Salesman and used to earn Rs.10,000/- per month as salary. He produced a salary certificate/Ex.A5, which shows that the net pay shown as Rs.7,090/-. He further admitted that Ex.A5 does not contain his signature. Whereas respondent No.2 contended that Ex.A5/salary certificate was not proved as required under the Evidence Act i.e. no wage register or acquaintance register has been placed before the Court. In the absence of filing of any proof, only notional income has to be taken into consideration. In view of the same, the Tribunal did not consider the income as alleged by the petitioners and

notionally fixed the deceased's income at Rs.6,000/- per month. At this juncture, learned counsel for petitioners relied upon in the case of **Mohammed Siddique** (supra) wherein the Hon'ble Apex Court held as under:

“The case of claimants that deceased, aged 23 years at time of accident, though not even a matriculate, was employed in a propriety concern on monthly salary of Rs.9,600/-. Proprietor of concern was examined as PW.2 and salary certificate marked as Ex.PW.1/8. Finding recorded by Tribunal that there was no reason to discord testimony of PW.2. Hon'ble Apex Court held that records were not available, cannot be ground for High Court to hold that testimony of PW.2 is unacceptable. And that in absence of other record, salary certificate and oral testimony of employer could not be accepted. In absence of any allegation that PW.2 was set up for purpose of case, and there being no contradictions in his testimony, High Court should not have proceeded to take minimum wages paid for unskilled workers at relevant point of time as benchmark. Interference made by High Court with findings of Tribunal with regard to monthly income of deceased, was therefore, uncalled for.

13. The Motor Vehicles Act is a welfare legislation, the protects the interests of the legal representatives of the

deceased and when the Tribunal found the petition under section 166 of the Act to be maintainable and adjudicated the same, it is clear that the petitioners are entitled to claim compensation under the head 'loss of dependency' on the actual income i.e. the salary of the deceased. Thus, this Court is inclined to consider the deceased's monthly income at Rs.7,090/- as per Ex.A5/Salary Certificate.

14. The annual income of the deceased would come to Rs.85,080/- (Rs.7,090/- x 12). To this, future prospects of 40% i.e. Rs.34,032/- is to be added as per the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi**² as the deceased was aged 28 years. Since the dependants are 4 in number, a deduction of 1/4th of the deceased's income towards personal expenses, which the deceased might have spent for himself, is proper. The appropriate multiplier as per the decision of **Sarla Verma Vs. Delhi Transport Corporation**³ is "17". Thus, the total loss of dependency would come to **Rs.15,18,678/-** (Rs.85,080/- + 40% Minus 1/4th x 17).

² (2017) 16 SCC 680.

³ (2009) 6 SCC 121.

15. The Tribunal awarded Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate to the petitioners which are very meagre. However, the petitioners are entitled to compensation under conventional heads as per the decision of the Hon'ble Apex Court in ***Pranay Sethi (supra)*** and ***Magma Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram***⁴. petitioner No.1, being the wife of the deceased, is entitled to **Rs.44,000/-** towards spousal consortium, petitioners No.2 and 3, being minor children, and petitioner No.4, being mother of the deceased, are entitled to Rs.40,000/- each i.e. **Rs.1,20,000/-** towards loss of parental consortium and towards loss of filial consortium, and petitioners are also entitled to Rs.16,500/- (Rs.15,000/- + 10%) towards loss of estate and Rs.16,500/- (Rs.15,000/- + 10%) towards funeral expenses. With regard to interest, the Tribunal granted interest @ 7% p.a. However, this Court is inclined to grant interest at 7.5% p.a. on the enhanced amount.

16. In all, the petitioners/appellants are entitled to **Rs.17,15,678/-** towards compensation. But, the Tribunal found that there was contributory negligence on the part of the deceased as it considered the evidence of eyewitness PW.2,

⁴2018 Law Suit (SC) 904

who deposed that on 16/17.5.2010 in the intervening night at about 2.30 a.m., he, along with one Markendeyulu and A. Lova Raju were returning from Macha Bollarm after attending a function on Bajaj Pulsar Motorcycle bearing No.AP-10-T/R-1646 and Markendeyulu were riding the said vehicle. He sat behind Markendeyulu, and when they reached near G. Pulla Reddy Sweet shop, Karkhana, at the same time, their motorcycle rider, Markendeyulu drove the vehicle at high speed in a rash and negligent manner and dashed the road divider. Due to the sudden impact, they all were fell down from the motorcycle, and they sustained severe injuries. He further deposed that as A. Love Raju received fatal injuries, he was immediately shifted to Gandhi Hospital, Hyderabad, and while undergoing treatment, he died. As there was triple riding, apart from it, there was rash and negligent driving on the part of the deceased, as such, there was contributory negligence on the part of the deceased also. However, with regard to contributory negligence on the part of the rider of the motorcycle at 75% and the remaining 25% on the part of the deceased. The Tribunal rightly appreciated the evidence with regard to contributory negligence and rightly apportioned the negligence, which needs no interference by this Court. Since

there was contributory negligence on the part of the deceased @ 25%, the petitioners are entitled to an amount of **Rs.12,86,758/-** (Rs.17,15,678 x 25% = Rs.4,28,920/-) (Rs.17,15,678/- minus Rs.4,28,920/- = 12,86,758/-).

17. Accordingly, M.A.C.M.A No.3943 of 2014 filed by the petitioners is allowed in part, enhancing the compensation amount from Rs.9,29,250/- **to Rs.12,86,758/-**-(Rupees Twelve Lakh, eighty six thousand, seven hundred and fifty eight only) with costs and interest @ 7.5% p.a on the enhanced amount from the date of petition till the date of realization. The respondents are directed to deposit the awarded amount along with interest and costs, after deducting the amount if any already deposited, within (02) months from receipt of a copy of this judgment. On such deposit, the petitioners are permitted to withdraw the same according to their apportionment as determined by the Tribunal. There shall be no order as to costs.

M.A.C.M.A NO. 4264 OF 2014

In view of findings on M.A.C.M.A. No.3943 of 2014, this M.A.C.M.A. No.4264 of 2014 is dismissed. There shall be no order as to costs.

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

NAMAVARAPU RAJESHWAR RAO, J

22nd day of September 2023.
BDR