(2019) 08 TEL CK 0008

In the Telangana High Court

Case No : M.A.C.M.A. No. 140 Of 2015

Bathula Rajeshwari And Others — APPELLANT

Vs

B.Prasad Rao And Others — RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Citation : (2019) 08 TEL CK 0008

Hon'ble Judges : T. Amarnath Goud, J

Bench : Single Bench

Advocate : M. Ajay Kumar, M. Vara Prasad Rao

Final Decision : Allowed

Judgement

1. This appeal is filed by the appellants-claimants aggrieved by the Judgment and Decree dated 15.06.2009 passed in M.V.O.P.No.57 of 2007 by the Motor Accident Claims Tribunal-cum-Principal District Judge, Warangal (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife and appellant Nos.2 and 3 are the minor children of the deceased, Bathula Mogili. On 22.02.2006 at about 9.30 PM., while the deceased was traveling on a motorcycle bearing No.AP15AA 8525 as a pillion rider, the rider of the motorcycle, drove it in a rash and negligent manner, due to which, the motorcycle turned turtle. In the said accident, the head of the deceased hit to a stone lying on the road, causing grievous head injury. He was shifted to Surya Hospital, Godavarikhani, and from there, to NIMS Hospital, Hyderabad for better treatment, but he succumbed to the injuries on 02.03.2006 while undergoing treatment. The claimants filed aforesaid MVOP claiming compensation of Rs.7,50,000/- against respondent No.1-owner, and Respondent Nos.2 and 3, insurer of the motorcycle, for the death of the deceased. Respondent No.4 is mother of the deceased.

3. Before the Tribunal, respondent Nos.1, 2 and 4 remained ex parte. Respondent No.3 filed its counter denying the averments of the claim petition

and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and awarded total compensation of Rs.4,79,446.64 Ps., with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed the present appeal, seeking enhancement of the same.

5. Sri M.Jaya Kumar, learned counsel for the appellants, submitted that though P.W.1 deposed that the deceased was earning Rs.5,000/- per month by doing business, the Tribunal fixed the income of the deceased at Rs.3,268/- per month, which needs to be enhanced by applying appropriate multiplier as per Smt. Sarla Varma Vs. Delhi Transport Corporation 2009 (6) SCC 1211 . He further submitted that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi 2017(6) ALD 170 (SC) . He further submitted that in view of the judgment of the Hon'ble Supreme Court in Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Others 2018 Law Suit (SC) 904 , appellant Nos.2 and 3 are entitled to Rs.50,000/- each, being the minor children of the deceased, under the head parental consortium and respondent No.4, being the mother of the deceased, is entitled to Rs.40,000/- under the head filial consortium.

6. Sri M.Vara Pradad Rao, learned counsel appearing for respondent Nos.2 and 3, submitted that crime vehicle is covered by package policy, which do not cover the risk of pillion rider and therefore, the insurer is not liable to pay the compensation.

7. There is no dispute that the deceased was doing business and in Ex.A2 inquest report, the occupation of the deceased is shown as business and therefore, the deceased might have earned Rs.5,000/-per month. In the facts and circumstances of the case, this Court is inclined to fix the income of the deceased as Rs.5,000/- per month, which comes to Rs.60,000/- per annum. Since there are four dependants, 1/4th of his income should be deducted towards personal expenditure as decided by the Apex Court in Smt. Sarla Varma (Supra). Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in Pranay Sethi (supra). Therefore, annual income of the deceased comes to Rs.84,000/- (Rs.60,000 + Rs.24,000/- future prospects). After deducting 1/4th towards personal expenses, the income of the deceased comes to Rs.63,000/- per annum. The deceased was 30 years at the time of accident and the multiplier for the age of the deceased is '17'. Hence, the compensation under the head 'loss of income' comes to Rs.10,71,000/- (Rs.63,000/- X 17). The appellants are also entitled to Rs.70,000/- towards conventional charges, as per Pranay Sethi's case

(supra). In the light of Nanu Ram's case (supra), a sum of Rs.1,00,000/- (Rs.50,000/- X 2) is granted to the appellants 2 and 3, being the minor children, and Rs.40,000/- is granted to respondent No.4, being the mother of the deceased. Therefore, the total compensation comes to Rs.12,81,000/- (Rs.10,71,000/- + Rs.70,000/- + Rs.1,00,000/- + Rs.40,000/-).

8. With regard to the fastening of liability is concerned, in the light of the fact that the crime vehicle is covered by comprehensive package policy Ex.B1, which is marked by R.W.1-Administrative Officer of the insurance company, the learned counsel appearing for the claimants submits that in view of the circular issued by the Insurance Regulatory and Development Authority of India (IRDA) in the year 2009, pillion rider is also included under the risk coverage.

9. It is necessary to refer to the said circular of IRDA., and it reads as under:-

'IRDA Ref: IRDA/NL/CIR/F&U/073/11/2009 November 16, 2009 To CEOs of all General Insurance Companies Re: Liability of Insurance Companies in respect of Occupants of a Private Car and Pillion rider on a Two- Wheeler under Standard Motor Package Policy [also called Comprehensive Policy.

Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

"SECTION II - Liability to Third Parties

1. Subject to the limits of liabilities as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:-

(i) Circular M.V. No.l of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the circular.

The above circulars make it clear that the Insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No.066/IRDA/F&U/Mar -08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No.019/IRDA/NL/F&U/Oct- 08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the afore-mentioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approve of Competent Authority.

Sd/- (Prabodh Chander) Executive Director'

10. A Division Bench of Delhi High Court in Yashpal Luthra V. United India Insurance Co. Ltd. 2011 ACJ 1415 , referring to the aforesaid IRDA circular, held that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car.

11. In view of the above, Ex.B.1 covers the risk of the deceased and hence, the appellants being the legal representatives of the deceased are entitled to receive the compensation awarded in this appeal.

12. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.4,79,446.64 Ps., to Rs.12,81,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The appellants are directed to pay the Court fee over above the amount claimed by them. Miscellaneous petitions pending, if any, shall stand closed. No costs.