*2020:APHC:33460*

**HIGH COURT OF ANDHRA PRADESH**

MONDAY ,THE FIFTEENTH DAY OF JUNE

TWO THOUSAND AND TWENTY

**PRSENT**

**THE HONOURABLE SRI JUSTICE BATTU DEVANAND**

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1675 OF 2010**

**Between:**

1. THE NEW INDIA ASSURANCE COMPANY LTD. -

**...PETITIONER(S)**

**AND:**

1. KONADA LAVANYA AND ANOTHER -

**...RESPONDENTS**

**Counsel for the Petitioner(s): NARESH BYRAPANENI**

**Counsel for the Respondents: E VENKATA REDDY**

**The Court made the following: ORDER**

***HON'BLE SRI JUSTICE BATTU DEVANAND**

**+ MACMA NO.1668 OF 2010**
**MACMA NO.2261 OF 2013**
**MACMA NO.1161 OF 2012**
**MACMA NO.1670 OF 2010**
**MACMANO.1675 OF 2010**

% 15.06.2020

+ MACMA NO.1668 OF 2010:

# The New India Assurance Company Limited,
Represented by its Divisional Manager,
D.No.30-15-35/A, Visakhapatnam. … Appellant.

Vs.

$ Peerupilli Appa Rao S/o Late Pothayya, Hindu,
Aged 59 years, R/o Thotaveedhi, Bheemunipatnam,
Visakhapatnam District and others. … Respondents.

+ MACMA NO.2261 OF 2013:

# Peerupalli Appa Rao S/o late Pothayya, aged
60 years, R/o Thotaveedhi, Bheemunipatnam,
Visakhapatnam District and others. … Appellants.

Vs.

$ N. Mutyalu S/o Appala Swamy, Business,
R/o 13-144A, B.R.V. Puram, Visakhapatnam and
another. … Respondents.

+ MACMA NO.1161 OF 2012:

# Peerupalli Appa Rao S/o late Pothayya, aged
60 years, R/o Thotaveedhi, Bheemunipatnam,
Visakhapatnam District and others. … Appellants.

Vs.

$ N. Mutyalu S/o Appala Swamy, Business,
R/o 13-144A, B.R.V. Puram, Visakhapatnam and
another. … Respondents.

+ MACMA NO.1670 OF 2010:

# The New India Assurance Company Limited,
Represented by its Divisional Manager,
D.No.30-15-35/A, Visakhapatnam. … Appellant.

Vs.

$ Peerupilli Appa Rao S/o Late Pothayya, Hindu,
Aged 59 years, R/o Thotaveedhi, Bheemunipatnam,
Visakhapatnam District and others. … Respondents.

+ MACMANO.1675 OF 2010:

# The New India Assurance Company Limited,
Represented by its Divisional Manager,
D.No.30-15-35/A, Daba Gardens, Visakhapatnam. ... Appellant.

Vs.

$ Konada Lavanya D./o Narasimha Rao, aged 17
Years, Studying II Inter in Sri Chaitanya College,
Vsiakhatpanm, being minor rep. by her father
Konada Narasimha Rao, S/o Venkataswamy,
R/o Flat No.503, Suvarna Apartments, Lawsons Bay
Colony, Visakhapatnam and another. ... Respondents.

! Counsel for the petitioners : Sri E. Venkata Reddy.

! Counsel for the 2nd Respondent : Sri Naresh Byrapaneni

< Gist:
> Head Note:
? Cases referred:
1 2001 (1) ALT 495 (D.B.)
2 2004 (4) ALD 444
3 2003 (2) LW 75
4 2009 ACJ 1291
5 (2004) 3 SCC 297= 2004 ACJ 1 (SC)
6 (2008)1 SCALE 531
7 (1997) 7 SCC 558
8 (2006) 4 SCC 250
9 2008 LawSuit (SC) 206
10 MACMA No.690 of 2011
11 2013(7) SCC62 (SC)
12 2004 ACJ 721 (SC)
13 2004 ACJ 428
14 2009 ACJ 1411 (SC)
15 2013 ACJ 554 (SC)
16 (2017) Supreme Court Cases 796
17 2017 (6) ALD 170
18 2003 ACJ 12 (SC)
19 2009 ACJ 2742 (SC)
20 2009 ACJ 2020 (SC)
21 2013 ACJ 1403
22 2015 (1) ALD 109

# THE HON'BLE SRI JUSTICE BATTU DEVANAND

**MACMA NO.1668 OF 2010**
**MACMA NO.2261 OF 2013**
**MACMA NO.1161 OF 2012**
**MACMA NO.1670 OF 2010**
**MACMANO.1675 OF 2010**

**COMMON JUDGMENT:**

**1) MACMA NO.1668 OF 2010:**

This appeal has been filed by the New India Assurance Company Limited i.e., 2nd respondent in MVOP.No.738 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Visakhapatnam (for short "the tribunal") against the decree and order dated 23.06.2010 disputing their liability as well as the quantum of compensation awarded by the tribunal.

**2) MACMA NO.2261 OF 2013:**

This appeal has been filed by the petitioners in MVOP.No.738 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Visakhapatnam against the decree and order dated 23.06.2010 seeking enhancement of compensation awarded by the tribunal.

**3) MACMA NO.1670 OF 2010:**

This appeal has been filed by the New India Assurance Company Limited i.e., 2nd respondent in MVOP.No.739 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Visakhapatnam against the decree and order dated 23.06.2010 disputing their liability as well as the quantum of compensation awarded by the tribunal.

**4) MACMA NO.1161 OF 2012:**

This appeal has been filed by the petitioners in MVOP.No.739 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Visakhapatnam against the decree and order dated 23.06.2010 seeking enhancement of compensation awarded by the tribunal.

**5) MACMANO.1675 OF 2010:**

This appeal has been filed by the New India Assurance Company Limited i.e., 2nd respondent in MVOP.No.1397 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Visakhapatnam against the decree and order dated 23.06.2010 disputing their liability.

6) All these appeals arises out of the same motor vehicle accident that occurred on 13.10.2005 involving the Van bearing No.A.P.31 U 1033 and the respondents in all M.V.O.Ps are one and the same. In view of the same, all these appeals are disposed of by common order.

7) The parties hereinafter referred to as petitioners and respondents as arrayed in the Tribunal.

8) The factual matrix of the case is thus:

a) The case of the petitioners is that one Peerupilli Prasad along with his wife and his niece-minor girl, was proceeding on Hero Honda Motor cycle bearing No.A.P.31 AG2190 on 13.10.2005 at about 6-30 hours, they started from Bheemili and proceeding towards Tagarapuvalasa to purchase cashew nuts there and when the motor

cycle reached near Rayapalem, the Van bearing No.A.P.31 U 1033 (hereinafter referred to as "crime vehicle") belonging to the 1st respondent came in a rash and negligent manner and hit the vehicle of the deceased, due to which the deceased, his wife and his niece fell down and sustained injuries and the deceased died on the spot. The wife of the deceased while undergoing treatment in the hospital died and his niece sustained injuries. A case in Crime No.307 of 2005 was registered by Bheemili police for the offences punishable under Sections 304-A, 337 and 338 of IPC.

b) As per the averments made in claim petition in M.V.O.P.No.738 of 2006, the petitioners 1 and 2 are the parents and 3rd petitioner-minor daughter of the deceased i.e., Peerupilli Prasad. The age of the deceased was at the time of the accident 28 years and was working with Lalkar Marine Pvt. Ltd., as Fitter and Welder and his work for a period of six months was on ship and the remaining six months he was at home and he was drawing monthly salary of 500 US dollar, apart from he was doing over time. Earlier to the accident he boarded on Lalkar Marine Pvt. Ltd., Company Ship for six months and returned home after completion of voyage and while waiting for the next call, he met with an accident. As the petitioners are dependants of the deceased, they filed claim petition before the tribunal seeking compensation of Rs.25,00,000/- from the respondents.

c) As per the averments made in claim petition in M.V.O.P.No.739 of 2006, the petitioners 1 and 2 are the parents-in-law and 3rd petitioner-minor daughter of the deceased i.e., Peerupilli Lakshmi. The age of the deceased is described as 20 years at the time of the accident. She was doing stitching and embroidery works and earning Rs.3,000/-

per month. As the petitioners are dependants of the deceased, they filed claim petition before the tribunal seeking compensation of Rs.3,00,000/- from the respondents.

d) As per the averments made in claim petition in M.V.O.P.No.1397 of 2006, the petitioner sustained injuries in the motor vehicle accident and was shifted to Seven Hills Hospital for treatment and spent Rs.25,000/- towards medical and extra nourishment charges and Rs.1,000/- towards transport charges and she remained in patient for three months. Thus, she sought compensation of Rs.1,50,000/- from the respondents.

9) The 1st respondent remained *exparte.*

10) The 2nd respondent-insurance company filed counters in all the OPs denying all the material allegations and putting the petitioners to strict proof of the same and contended that the deceased in M.V.O.P.No.738 of 2006 himself drove the motor cycle in a rash and negligent manner and caused the accident and as such the insurance company is not liable to pay any compensation and sought for dismissal of the petition.

11) (a) During trial in M.V.O.P.No.738 of 2006, PWs.1 to 3 were examined and Exs.A.1 to A.15 were marked on behalf of the petitioners. On behalf of the respondents, R.W.1 was examined and Exs.B.1 to B.3 were marked. Exs.X.1 to X.3 were marked through PW.3.

(b) During trial in M.V.O.P.No.739 of 2006, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked on behalf of the petitioners.

On behalf of the respondents, R.W.1 was examined and Exs.B.1 and B.2 were marked.

(c) During trial in M.V.O.P.No.1397 of 2006, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked on behalf of the petitioners. On behalf of the respondents, R.W.1 was examined and Exs.B.1 and B.2 were marked. Ex.X.1 was marked through PW.2.

12) Basing on the oral and documentary evidence available on record, the tribunal passed decree and order holding that:

a) the accident occurred due to rash and negligent driving of the driver of the crime vehicle belonging to the 1st respondent.

b) In O.P.No.738 of 2006 the tribunal awarded an amount of Rs.12,41,000/- as compensation with costs and future interest at the rate of 6% per annum from the date of petition till the date of realization against the respondents 1 and 2 jointly and severally.

c) In O.P.No.739 of 2006 the tribunal awarded an amount of Rs.3,00,000/- as compensation with costs and future interest at the rate of 6% per annum from the date of petition till the date of realization against the respondents 1 and 2 jointly and severally.

d) In O.P.No.1397 of 2006 the tribunal awarded an amount of Rs.29,000/- as compensation with costs and future interest at the rate of 6% per annum from the date of petition till the date of realization against the respondents 1 and 2 jointly and severally.

13) Aggrieved by the award, fastening the liability against the insurance company and disputing the quantum of compensation, the insurance company filed appeal in MACMA No.1668 of 2010 and MACMA No.1670 of 2010 against the decree and order dated 23.06.2010 passed

by the tribunal in M.V.O.P.Nos.738 of 2006 and 739 of 2006 respectively. The insurance company also filed MACMA No.1675 of 2010 against the decree and order dated 23.06.2010 passed by the tribunal in M.V.O.P.No.1397 of 2006 with regard to fastening the liability on the insurance company.

14) (a) Dissatisfied with the compensation of Rs.12,41,000/- awarded by the tribunal against the claim of Rs.25,00,000/-, the petitioners in M.V.O.P.No.738 of 2006 filed MACMA No.2261 of 2013 seeking enhancement of compensation.

(b) Dissatisfied with the compensation of Rs.3,00,000/- awarded by the tribunal against the amount of Rs.4,08,000/- as determined by the tribunal, the petitioners in M.V.O.P.No.739 of 2006 filed MACMA No.1161 of 2012 seeking enhancement of compensation.

15) Heard Sri Naresh Byrapaneni, learned counsel appearing on behalf of the insurance company and Sri E. Venkata Reddy, learned counsel appearing on behalf of the petitioners in all appeals. The 1st respondent remained *exparte* and suffered decree before the tribunal, his absence will not have any effect in these appeals in the light of decision reported in **Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others [1].**

16) The learned counsel for the insurance company argued that the driver, who drove the vehicle had no licence to drive transport vehicle i.e., offending goods vehicle basing on the evidence of R.W.1 and Ex.B.1 and there was violation of the conditions of the policy of the insurance

[1] 2001 (1) ALT 495 (D.B.)

by 1st respondent i.e., the owner of the crime vehicle and the tribunal ought to have dismissed the claim against the insurance company. Learned counsel further contended that it is the statutory duty on the part of the owner of the vehicle to see that the driver to whom the vehicle is entrusted, holds a valid and effective driving licence. He submits that the deceased in M.V.O.P.No.738 of 2006 was riding the motor cycle along with two pillion riders, which was the sole cause of the accident, and should apportioned the negligence on the part of the deceased also. He further contended that the tribunal having rejected the evidence of PW.3, grossly erred in presuming that the monthly income of the deceased in M.V.O.P.No.738 of 2006 as Rs.10,000/- without any basis and the tribunal ought to have taken the notional income of Rs.15,000/- as annual income of the deceased for computing compensation, in absence of any proof of income. The tribunal ought not to have considered the petitioners 1 and 2 as dependants of the deceased in M.V.O.P.Nos.738 and 739 of 2006 as they have independent incomes. Sri Naresh Byrapaneni, learned counsel for the insurance company further contends that as per Section 149(2) of the Motor Vehicles Act, 1988 and Rule 123 of Central Motor Vehicle Rules, the insurance company is not liable to pay compensation in the present appeals.

17) On the other hand, learned counsel for the petitioners argued that the order of the tribunal on the liability aspect is based on the evidence available on record and there is no need to revise the same. With regard to the quantum of compensation is concerned, the learned counsel for the petitioners contended that the tribunal committed error in granting compensation of Rs.12,41,000/- as against the claim of

Rs.25,00,000/- in M.V.O.P.No.738 of 2006 and Rs.3,00,000/- only in M.V.O.P.No.739 of 2006 as and when the tribunal itself assessed the compensation of Rs.4,08,000/- for which the petitioners are entitled and basing on the evidence available on record, the petitioners are entitled for more compensation under different heads and sought enhancement of the compensation.

18) In the light of the above rival contentions the points for determination in these appeals are:

> (1) Whether the driver of the crime vehicle bearing No.A.P.31 U 1033 alone was responsible in causing the accident or whether there is contributory negligence on the part of the rider of the motor cycle bearing No.AP 31 AG 2190?
>
> (2) Whether the award of the tribunal fastening joint liability on the insurer with insured to indemnify the insured for the petitioners requires interference by this Court in light of the alleged violation of terms and conditions of the insurance policy?
>
> (3) Whether the compensation awarded by the tribunal is just and reasonable or needs enhancement?
>
> (4) To what relief?

19) **Point No.1**:-

To prove the manner of accident, the 1st petitioner in M.V.O.P.No.738 and 739 of 2006 was examined as PW.1 in these two cases. Petitioner in M.V.O.P.No.1397 of 2006 was examined as PW.1 in the said case and examined as PW.2 in other two cases. Admittedly PW.1 is not an eye witness. PW.2-Konda Lavanya is an eye witness, who was proceeding on the motor cycle at the time of accident along with the deceased in M.V.O.P.No.738 of 2006 and his wife, who also succumbed to injuries later, deposed that the accident occurred due to rash and negligent driving of the van by its driver belonging to the 1st respondent. It appears from the testimonies of PWs.1 and 2 coupled

with Exs.A.1 and A.2, it is manifest that the accident was the result of rash and negligent driving of the van by its driver belonging to the 1st respondent in which the deceased in M.V.O.P.Nos.738 and 739 of 2006 died and the petitioner in M.V.O.P.No.1397 of 2006, who was the eye witness in all cases, sustained injuries.

20) On examination of the evidence of PW.2, it is clear that she was proceeding on the motor cycle along with Peerupilli Prasad, who was the deceased in MVOP No.738 of 2006 and his wife at the time of the accident and as such this is a case of triple riding. As per the evidence of PW.2, admittedly, the deceased along with two others were travelling on a motor cycle which is statutorily prohibited under Section 128 of the Motor Vehicles Act. This Court is of the opinion that the motor cycle which is meant for two persons, there would be congestion to the riding of the motor cycle and might have lost control resulting in the accident, thus, there was contributory negligence on the part of the rider of the motor cycle i.e., deceased and the tribunal while fastening liability on the insurance company ought to have considered this aspect in causing the accident and ought to have fixed the culpability in causing the accident on the part of the rider of the motor cycle also.

I am fortified in my view by the decision of the Hon'ble High Court of Andhra Pradesh in **United India Insurance Co. Ltd. Vs. K. Anjaiah and ors**[2] and the relevant portions of the judgment is extracted hereunder:

7. "In the light of the rival contentions, the point that arises for consideration is whether the driver of the accident lorry alone was responsible in causing the accident or not.

[2] 2004 (4) ALD 444

8. There is no dispute as to the date and nature of the accident. There is even no dispute, as to the fact that there was triple riding and the injured (since deceased) was one of the pillion rider on the scooter. Undoubtedly, triple riding on a two wheeler, is, prohibited under Section 128 of the Act. Section 128 of the Act reads thus:

"128. Safety measures for drivers and pillion riders:- (1) No driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two wheeled motor cycles and pillion riders thereon."

9. A plain reading of the above provision, it is clear that triple riding is prohibited on a two wheeler. When a statutory bar imposed under the Act, it is not made to be ignored by the riders of two wheelers, but to be followed in their own interest and safety. Though it has come in the evidence of PW.2 who claims to be an eye-witness to the accident that on the fateful day the driver of the accident lorry drove the lorry in a rash and negligent manner resulting in accident, but it is common understanding that one will certainly feel discomforted when riding a two wheeler with two pillion riders and naturally his balance over the vehicle will be limited by reason of accommodating two pillion riders and he will not have that ease and comfort of riding with one pillion rider. In the instant case, it is admitted that there was triple riding on the scooter. Under those circumstances, even in the absence of independent evidence adduced by the Insurance Company that the

accident had occurred due to triple riding, it can be reasonable presumed that the rider of the scooter was discomforted by reasons of allowing two pillion riders and thus contributed in causing the accident. Had he been riding the scooter with one pillion rider, probably he would have averted the accident by swerving the scooter to the extreme left side, but could not do so probably, his hands and legs movement was limited due to the congestion. In such view of the matter, the culpability in causing the accident is fixed at 75% on the part of the driver of the accident lorry and 25% on the part of the rider of the scooter.

21) The similar issue came up for consideration before a Division Bench of Madras High Court in the case of **Managing Director, Tamil Nadu State Transport Corporation v. Abdul Salam**[3], wherein at Paras 10 and 11, it was held thus:

> "We are concerned as to whether such action of the individuals is permissible under law. The motor cycle and any other two wheelers are meant only for two persons, the rider and a pillion rider. If more than two persons are travelling in a motor cycle or any other two wheeler, undoubtedly such action of the individual would become illegal and unauthorized. It is an awful sight when we come across three persons travelling in a motor cycle. They are sitting in such a cramped manner that the rider of the motor cycle almost sitting on the petrol tank or at the front edge of the seat. When he was sitting in such a position, naturally because of the restricted movement of his legs, he cannot have the complete control over the brake. The movements of his hands also so restricted. When that be so, this Court is of the opinion that definitely the rider of the two wheeler cannot have full control over the vehicle. There is no gain saying that now-a-days it has become the normal course that three persons, are travelling in a motor cycle."

[3] 2003 (2) LW 75

22) In another decision in **Pournami vs. Sandhya Sundheer and another**[4] a division bench of Kerala High Court held as under:

> "8. So far as entitlement of compensation for the appellants is concerned, who agree with the view taken by the tribunal that contributory negligence is presumed when the motor bike involved in the accident is overloaded with two additional passengers over and above the permitted two passengers. However, in this case we noticed that the children travelling along with the parents in the bike were of tender age and their weight would not have made the vehicle unstable. Therefore on facts we estimate contributory negligence at 25% and uphold entitlement of the appellants for getting the balance compensation fixed by the learned tribunal from the insured and the insurer of the offending vehicle."

23) Basing on the evidence available on record in the present case and in the light of the decisions cited supra, I am of the opinion that the rider of the motor cycle was discomforted by reason of allowing two pillion riders and thus contributed in causing the accident. Under these circumstances, I hold that the contributory negligence on the part of the rider of the motor cycle is fixed at 25% and on the part of the driver of the crime vehicle is fixed at 75%.

24) **Point No.2:**

With regard to the contention of the leaned counsel appearing for insurance company that there is no driving licence to the driver of the crime vehicle to drive the transport vehicle and to substantiate the same, the 2nd respondent examined R.W.1 i.e., Senior Assistant of Deputy Transport Commissioner Office, Visakhapatnam who produced Ex.B.1, the driving licence particulars of the driver of the crime vehicle

[4] 2009 ACJ 1291

i.e., Sri V. Sanjeeva Rao and as per the same the driver has non-transport licence from 30.06.2000 to 29.06.2020 and he obtained transport licence from 31.10.2005 valid up to 30.10.2008 which was renewed up to 01.12.2009 and it was valid up to 30.11.2012. The accident was occurred on 13.10.2005 and as such it is clear that the driver had no licence to drive the transport vehicle as on the date of the accident. Though, the tribunal accepting that the insurance company could able to prove that at the time of accident, the driver had no valid driving licence to drive the transport vehicle, on the other hand, the tribunal fastened the liability on the insurance company observing that the insurance company failed to examine either the driver or the owner of the crime vehicle to show that the owner willfully allowed the driver who has no driving licence to drive the transport vehicle or exercised reasonable care while handing over the vehicle to the driver. In my considered opinion the finding of the tribunal on this aspect is not correct. Now, we will examine the relevant provisions of Motor Vehicles Act, 1988 to decide this issue.

25) Chapter-II of the Motor Vehicles Act, 1988 deals with the licencing of drivers of motor vehicles and the relevant provisions are extracted hereunder:

**Section-3 Necessity for driving licence:-**

(1) No person shall drive a motor vehicle in any public place unless he holds effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle (other than (a motor cab or motor cycle) hired for his own use or rented under any scheme made under sub-section (2) of section 75) unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

**Section 4: Age limit in connection with driving of motor vehicles:-**

(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that (a motor cycle with engine capacity not exceeding 50cc) may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.

**Section 5: Responsibility of owners of motor vehicles for contravention of sections 3 and 4:-** No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

26) On plain reading of Sections 3 and 5 of the Motor Vehicles Act, it will be clear that no person shall drive the motor vehicle in any public place unless he holds effective driving licence issued to him authorizing him to drive the vehicle and no person shall so drive a transport vehicle unless his driving licence specifically entitles him so to do. Section 5 manifest that the responsibility of owners of motor vehicles and no owner or person in charge of a motor vehicle shall cause or permit any

person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle. On combined reading of the above provisions provides that no person shall drive a motor vehicle without holding an effective driving licence and no owner shall permit any person who does not having the valid licence to drive the vehicle. In my opinion, it is the duty and responsibility of the owner of the vehicle to satisfy himself whether such person is properly licenced or not as required under Sections 3 and 4 of the Act before entrusting the vehicle to such person.

27) A three Judges' Bench the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Swaran Singh and Others**[5], upon going through the provisions of the Act as also the precedents operating in the field, laid down the following dicta:

> "84. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g. a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar 22 .)"

[5] (2004) 3 SCC 297= 2004 ACJ 1 (SC)

28) In **Premkumari & Ors. Vs. Prahlad Dev & Ors.**[6], the Hon'ble Apex Court opined that:

> "10. In the case of National Insurance Co. Ltd. v. Kusum Rai and Ors. (2006) 4 SCC 250, the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence therefor. Ram Lal, who allegedly was driving the said vehicle at the relevant time, was holder of a licence to drive light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. In such circumstances, the Court observed that the appellant-National Insurance Co. Ltd., therefore, could raise the said defence while considering the stand of the Insurance Company. This Court, pointing out the law laid down in Swaran Singh (supra) concluded that the owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

29) The Hon'ble Apex Court in **United India Insurance Co. Ltd. Vs. Gian Chand and Others**[7], wherein it was held that:

> "12. Under the circumstances, when the insured had handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the third party who might have suffered on account of vehicular accident caused by such unlicensed driver...."

30) In **National Insurance Co. Ltd. Vs. Kusum Rai and Others**[8], the Hon'ble Apex Court held that:

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[6] (2008)1 SCALE 531
[7] (1997) 7 SCC 558
[8] (2006) 4 SCC 250

11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence there for. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence.

31) In **Sardari Vs. Sushil Kumar** [9] the Hon'ble Apex Court held that:

It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

32) The learned single judge of this Court while dealing with the similar issue in **Bajaj Allianz General Insurance Company Limited vs. Penugumatla Dhanalakshmi and another** [10] held while answering point No.1 as under:

"The 1st respondent is owner-cum-driver of the auto which is transport LMV and R.Ws.1 and 2 examined on behalf of the insurer with reference to Ex.B.1 to B.6 also deposed that it is a transport LMV and as per Ex.B.5 and B.6 and as per Ex.B.2, the owner-cum-driver got only LMV non transport licence but not for transport and even Ex.B.3 notice issued to produce the licence particulars covered by Ex.B.4 acknowledgement, the owner-cum-driver of the auto did not comply. It establishes that but for no valid licence he could have produced by non-giving reply to draw inference adversely against the owner-cum-driver. However, said violation of the policy terms or permit even it is to the conscious knowledge to attribute being owner-cum-driver nothing to show willful and fundamental to exonerate the insurer once the policy covers the

[9] 2008 LawSuit (SC) 206
[10] MACMA No.690 of 2011

risk admittedly within the scope of Section 149 read with 168 of the Act to direct the owner to pay and then to recover. Thus, fixing of joint liability against the Insurer and insured is thereby unsustainable but for to fasten liability on the Insurer to pay to the claimant and recover. Accordingly, Point No.1 is answered."

33) In view of the expressions of the Hon'ble Apex Court and this Hon'ble Court stated supra, in the light of the evidence of R.W.1 and Ex.B.1, it can be safely conclude that the driver of the crime vehicle is not holding valid and effective driving licence at the time of the accident and thereby, the 1st respondent i.e., insured of the crime vehicle has committed statutory violation as well as violation of terms and conditions of the insurance policy and as such, it is held that there is no liability on the insurer to indemnify the insured to pay compensation to the petitioners and the liability cannot be fastened on the insurance company.

34) However, the Hon'ble Apex Court in **S. Iyyappan Vs. United India Insurance Company**[11] held that even though the insurer's defence that there is a breach of conditions of the policy excluding from liability, from the driver is not duly licenced in driving the crime vehicle when met with accident, third party as a statutory right under Section 149 read with 168 of the Act to recover compensation from insurers and for the insurer to proceed against the insured for recovery of amount paid to third party in case there was any fundamental breach of condition of insurance policy.

[11] 2013(7) SCC62 (SC)

35) In view of the fact that the petitioners in these claim petitions are third parties to the contract of insurance and the Motor Vehicles Act is being a beneficial legislation, to meet the interest of justice, this Court is of the pinion that insurer in the instant claim petitions has to pay the compensation at first instance and recover the same from the insured. Accordingly, the insurer in these appeals is directed to pay the compensation to the petitioners and recover the same from the insured i.e., 1st respondent by following the procedure prescribed under the settled law laid down by the Hon'ble Apex Court in (1) **Oriental Insurance Company Limited vs. Nanjyappan and others[12],** (2) **National Insurance Company Limited vs. Baljith Kour and others[13], (3) Oriental Insurance Company Limited vs. Angad Kol and others [14], (4) Manager, National Insurance Company Limited vs. Saju P. Paul and another [15] and (5) Manuara Khatun and others vs. Rajesh Kumar Singh and others [16].**

36) **Point No.3:**

**M.V.O.P.No.738 of 2006**:

With regard to the quantum of compensation is concerned, as per the contents of claim petition in M.V.O.P.No.738 of 2006, the deceased was aged 28 years and was working with Lalkar Marine Pvt. Ltd. as Fitter and Welder and drawing monthly salary of 500 US dollars. To support their contention, the petitioners examined one Batte Suryanarayana as PW.3, Seaman, who deposed that he also sailed as one of the crew members of the shipping companies and he worked in

[12] 2004 ACJ 721 (SC)
[13] 2004 ACJ 428
[14] 2009 ACJ 1411 (SC)
[15] 2013 ACJ 554 (SC)
[16] (2017) Supreme Court Cases 796

Lalkar Shipping company. He further deposed that the deceased was drawing 500 US dollars towards his salary per month and 100 US dollars towards over time which comes to Rs.24,000/- per month and Rs.1,44,000/- for six months. He also exhibited Exs.X.1 to X.3 which are Photostat copies of the Identity card and also continuous discharge certificate, Pass port and letter of employment contract and wage slip. The tribunal observed that PW.3 is not authorized to speak about the salary particulars of the deceased as he has not issued the salary certificate and he was only a co-employee and it is for the Management of shipping company who employed the deceased is competent to speak about the salary particulars of the deceased. Though, the tribunal has not considered the evidence of PW.3, but taking into consideration of the technical qualification of the deceased even in the absence of any such material produced by the petitioners, as the deceased was a Fitter and Welder and taking into consideration of the certificates produced by the petitioners, his monthly income was assessed at the rate of Rs.10,000/- per month. The tribunal has deducted 1/3$^{rd}$ of the income towards personal expenses of the deceased if he has alive, fixed a monthly income at the rate of Rs.6,700/- and Rs.80,400/- per annum. As per the claim petition the age of the deceased was mentioned as 40 years. The tribunal applied multiplier "15" and determined loss of dependency to Rs.12,06,000/-. The tribunal also awarded Rs.15,000/- towards love and affection and Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. In total the tribunal awarded an amount of Rs.12,41,000/- as compensation with interest at the rate of 6% per annum from the date of the petition till the date of realization.

37) The Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others**[17] held that while determining the income an addition of 25% of actual salary to the income of the deceased towards future prospectus where the deceased was between the age of 40 to 50 years should be regarded as necessary method of computation.

38) While determining the compensation, in the instant case, the tribunal has not considered the future prospectus of the earning of the deceased. To follow the law laid down in *Pranay Sethi's case*, there should be an addition of 25% of actual salary to be added towards future prospectus of earnings of the deceased i.e., Rs.6,700/- per month (actual salary fixed by the tribunal) + Rs.1,675/- = Rs.8,375/-. As such, the annual income of the deceased to be considered as 1,00,500/-. If the same is multiplied with the relevant multiplier "15", the loss of dependency comes to Rs.15,07,500/-. The amounts to be granted under conventional heads should be enhanced at the rate of 10% namely three years as per the directions of the Hon'ble Apex Court in *Pranay Sethi's* case (supra). As such, the petitioners are entitled for Rs.16,500/- towards loss of estate, and Rs.16,500/- towards funeral expenses.

Thus, the total compensation payable to the petitioners under different heads as per *Pranay Sethi's* case (9 supra) can be detailed as below:

| | |
|---|---|
| (i) towards loss of dependency | : Rs.15,07,500-00 |
| (ii) towards loss of estate | : Rs. 16,500-00 |
| (iii) towards funeral expenses | : Rs. 16,500-00 |
| Total | : Rs.15,40,500-00 |

[17] 2017 (6) ALD 170

39) In the light of the fixing 25% of contributory negligence on the part of the rider of the motor cycle i.e., the deceased in MVOP No.738 of 2006, while deciding point No.1 as above, the petitioners are entitled for compensation of Rs.11,55,375/-.

40) **M.V.O.P.No.739 of 2006**:

As per the contents of claim petition in M.V.O.P.No.739 of 2006, the deceased was aged 20 years and doing stitching clothes and embroidery works and earning Rs.3,000/- per month. Though there is no any proof to substantiate the income of the deceased, the tribunal has considered the services of the deceased as services of the mother of the 3rd petitioner and quantified at Rs.3,000/- per month and deducted 1/3rd of the said income towards personal expenses of the deceased, if she has alive, and fixed a monthly income at the rate of Rs.2,000/- and Rs.24,000/- per annum which is reasonable in the opinion of this Court. But the tribunal failed to consider the future prospectus of earnings of the deceased. As per the decision of the Hon'ble Apex Court in *Pranay Sethi's case* (supra) while determining the income an addition of 40% towards future prospectus has to be added to the actual income of the deceased where the deceased was below the age of 40 years should be regarded as necessary method of computation. To follow the law laid down in *Pranay Sethi's case (supra)*, there should be an addition of 40% of actual income to be added towards future prospectus of earnings of the deceased i.e., Rs.2,000/- per month (actual income fixed by the tribunal) + Rs.800/- = Rs.2,800/-. As such, the annual income of the deceased to be considered as Rs.33,600/-. If the same is multiplied with the relevant multiplier "18", the loss of dependency comes to

Rs.6,04,800/-. The amounts to be granted under conventional heads should be enhanced at the rate of 10% namely three years as per the directions of the Hon'ble Apex Court in *Pranay Sethi's* case (supra). As such, the petitioners are entitled for Rs.16,500/- towards loss of estate, and Rs.16,500/- towards funeral expenses.

Thus, the total compensation payable to the petitioners under different heads can be detailed as below:

| | |
|---|---|
| (i) towards loss of dependency | : Rs.6,04,800-00 |
| (ii) towards loss of estate | : Rs. 16,500-00 |
| (iii) towards funeral expenses | : Rs. 16,500-00 |
| Total | : Rs.6,37,800-00 |

41) In the O.P. the petitioners claimed Rs.3,00,000/- and the tribunal awarded Rs.3,00,000/- as against the amount of Rs.4,08,000/- as determined by the tribunal. But while determining the compensation in this case, this Court is of the opinion that the petitioners are entitled for Rs.6,37,800/- as compensation. Basing on the evidence available on record and facts and circumstances of the case, this Court is of the opinion that this Court can grant compensation more than the claim made which is just, equitable, fair and reasonable compensation the opinion of this Court is supported by the law laid down by the Hon'ble Apex Court in **Nagappa vs. Gurudayal Singh** [18] held as follows:

> "(10) Thereafter Section 168 empowers the claims tribunal 'make an award determining the amount of compensation which appears to it to be just.' Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

[18] 2003 ACJ 12 (SC)

42) The principle was followed in the later decisions in **Oriental Insurance Company Limited vs. Mohd. Nasir [19], Ningamma v. United India Insurance Company Limited[20]** and **Rajesh and others v. Rajbir Singh and others [21]** in which it was held that tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

43) In the light of the fixing 25% of contributory negligence on the part of the rider of the motor cycle while deciding point No.1 as above, the petitioner is entitled for compensation of Rs.4,78,350/-.

44) **M.V.O.P.No.1397 of 2006**:

In this petition the petitioner is a 17 years minor girl who is studying II Intermediate sustained injuries in the accident occurred on 13.10.2005 while she was proceeding as a pillion rider on a motor cycle. As per the evidence of the doctor, who was examined as PW.2, who treated the petitioner, deposed that the petitioner was admitted in their hospital on 13.10.2005 and he noticed tenderness over the left glutlal region and there was abrasion and tenderness over the right acromall region and she was sutured in casualty medical ward for wound of 4x2 interial aspect of right thigh. Ex.A.3 wound certificate was issued by them and as per the said wound certificate she sustained one grievous injury and one simple injury. They issued Ex.A.5 for an amount of Rs.12,356/- towards medical expenses. Considering the evidence of PW.2 and Ex.A.3, the tribunal awarded Rs.2,000/- towards simple injury

[19] 2009 ACJ 2742 (SC)
[20] 2009 ACJ 2020 (SC)
[21] 2013 ACJ 1403

and Rs.10,000/- for grievous injury and Rs.5,000/- for pain and suffering and Rs.12,000/- towards medical and other incidental expenses. In total Rs.29,000/- was granted as compensation.

45) In fact, there is no appeal filed against the order of the tribunal granting Rs.29,000/- as compensation against the claim of Rs.1,50,000/- by the petitioner. However, while dealing with these appeals, this Court gone through the order of the tribunal and felt that (in view of the evidence of the PW.3, the doctor, who treated the petitioner) the tribunal has not granted just and reasonable compensation to the petitioner and just and reasonable compensation to be granted for the injuries sustained by the petitioner.

46) In **Janapareddy Nagayya @ Naganna vs. R. Mallikharjuna Rao and others**[22] the High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh while dealing with the similar issue Rs.25,000/- for grievous injury, Rs.3,000/- for simple injury, Rs.3,000/- for extra nourishment, Rs.2,000/- for transportation charges was granted to the injured-petitioner therein. This Court is of the opinion basing on the facts and circumstances of the case and evidence available on record and in the light of the settled law that the Courts have to consider to grant just, fair, equitable and reasonable compensation to the victims, in the instant case, the petitioner-injured is entitled for Rs.25,000/- towards grievous injury, Rs.3,000/- towards simple injury, Rs.3,000/- towards extra nourishment and Rs.2,000/- towards transportation charges in addition to the Rs.5,000/- awarded by

[22] 2015 (1) ALD 109

the tribunal for pain and suffering and Rs.12,000/- granted towards medical expenses. In total the petitioner is entitled Rs.50,000/-.

47) In the light of the fixing 25% of contributory negligence on the part of the rider of the motor cycle while deciding point No.1 as above, the petitioner is entitled for compensation of Rs.37,500/-.

48) **Point No.4:**

In the result, the M.A.C.M.A.Nos.1668 of 2010, 1670 of 2010, 1675 of 2010, 1161 of 2012 and 2261 of 2013 are partly allowed and ordered as follows:

(a) the contributory negligence on the part of the rider of the motor cycle is fixed at 25% and on the part of the driver of the crime vehicle is fixed at 75%;

(b) the insurance company is directed to pay the compensation to the petitioners and recover the same from the insured by following the procedure prescribed under the settled law laid down by the Hon'ble Apex Court as directed in para No.33 supra;

(c) the petitioners in MVOP No.738 of 2006 are entitled for compensation of an amount of Rs.11,55,375/- (Rupees eleven lakh fifty five thousand three hundred and seventy five only);

(d) the 3rd petitioner in MVOP No.739 of 2006 is entitled for compensation of an amount of Rs.4,78,350/- (Rupees four lakh seventy eight thousand three hundred and fifty only),

(i) The enhanced amount of Rs.1,78,350/- shall carry interest at the rate of 6% per annum from the date of petition till realization.

(ii) The tribunal shall disburse the compensation amount after payment of the requisite Court Fee on the enhanced amount.

(e) the petitioner in MVOP.No.1397 of 2006 is entitled for compensation amount of Rs.37,500/- (Rupees thirty seven thousand and five hundred only).

(i) The enhanced amount of Rs.8,500/- shall carry interest at the rate of 6% per annum from the date of petition till realization.

(f) the insurance company is directed to deposit the compensation amount within one month from the date of receipt of this judgment;

(g) the other directions of the tribunal with respect to interest and apportionment of the compensation shall remain unaltered in all OPs.;

(h) there shall, however, be no order as to costs in these appeals.

Miscellaneous Petitions pending, if any, shall stand closed in consequence.

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**JUSTICE BATTU DEVANAND**

Dt. 15.06.2020
PGR

Note: LR copy to be marked.