HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.2753 of 2009
AND
M.A.C.M.A.No.1766 of 2014

COMMON JUDGMENT:

These appeals are against order dated 18.07.2007 in O.P.No.1245 of 2005 on the file of the XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Tribunal').

2. Appellant in M.A.C.M.A.No.2753 of 2009 is 2nd respondent and appellant in M.A.C.M.A.No.1766 of 2014 is 3rd respondent in the above referred O.P.No.1245 of 2005 and brief facts leading to these appeals are as follows:

3. Respondents No.1 and 2 in both the appeals filed the above referred O.P. claiming compensation of Rs.3,00,000/- for the death of one Rukkamma, who died in a road traffic accident that took place on 04.09.2004 at Rajapur within the jurisdiction of Balanagar Police Station. Respondents No.1 and 2-claimants contended that the deceased Rukkamma was 45 years and earning Rs. 3,000/- as a labourer and due to her death, respondents No.1 and 2, who are her children, sustained loss as they are dependants on the income of the deceased. They also contended they lost love and affection and on these grounds they claimed a sum of Rs.3,00,000/-. The bus

involved in the accident was under hire with Karnataka State Road Transport Corporation (KSRTC) i.e., appellant in M.A.C.M.A.No.1766 of 2014 and insured with appellant in M.A.C.M.A.No.2753 of 2009. Both the appellants resisted the claim of claimants-respondents No.1 and 2 and thrown the liability on each other.

4. After considering the evidence of PWs. 1 and 2 and documents Exs.A-1 to A-7, the Tribunal granted Rs.2,02,000/- as compensation with interest at 7.5% per annum, directing appellants in both the appeals and also the Manager of Maa Travels to deposit the said amount within 30 days from the date of order. Aggrieved by the said award, appellants-respondents No. 2 and 3 in the O.P.No.1245 of 2005 preferred these appeals.

5. Heard both sides.

6. The main contention of KSRTC i.e., appellant in M.A.C.M.A.No.1766 of 2014 is that it has no liability and the entire compensation has to be paid by the Insurance Company in view of the Full Bench Judgment of this Court in **APSRTC, Hyderabad and another v. B.Kanakaratnabai and others**[1] and also decision of Hon'ble Supreme Court in **Uttar Pradesh State Road Transport Corporation v. Kulsum and others**[2].

7. The contention of appellant in M.A.C.M.A.No.2753 of 2009 i.e., Insurance Company, is that the Tribunal has

granted high compensation and the relevant factor applicable to the age group of 45 years is not correctly taken and that the Tribunal failed to see that the bus was on hire with KSRTC and the entire liability is on KSRTC to pay the compensation.

8. Advocate for claimants submitted that the Tribunal awarded compensation after assessing the evidence on record and in fact a wrong multiplier is taken. But, the claimants have not preferred any appeal and that the compensation fixed by the Tribunal has to be confirmed.

9. Now the point that would arises for my consideration in these appeals is:

> *Whether the order dated 18.07.2007 in O.P.No.1245 of 2005 on the file of the XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad, is legal, proper and correct?*

POINT :

10. Admittedly, Rukkamma died in a motor accident that took place on 04.09.2004. From the evidence on record, it is clear that the accident was due to rash and negligent driving of bus driver, which is a private vehicle under hire with KSTRC. Admittedly, the bus is insured with the Insurance Company i.e., appellant in M.A.C.M.A.No.2753 of 2009 and 4rd respondent in M.A.C.M.A.No.1766 of 2014. Now from the decisions relied on by advocate for KSRTC, it is a settled law that the liability of Insurance

Company is exclusive and absolute and it cannot escape its liability for payment of compensation to third party claimants, having issued the policy when the owner has not violated any terms and conditions of policy. So, the objection of KSRTC with regard to its liability to share the compensation has to be accepted in view of the principle laid down in the above referred two decisions. This Court in APSRTC, Hyderabad v. B.Kanakaratnabai observed that when the Insurance Company undertook to indemnify third party risk and issued policy, it is liable to pay the compensation to the claimants, therefore, it is the liability of Insurance Company and not KSRTC.

11. So far as the objection of the Insurance Company with regard to the quantum of compensation, there is no sustance, because the Tribunal took multiplier ‘13’ to the age group of 45 years though the actual multiplier applicable is ‘14’. So far as the income of the deceased is concerned though the claimants contended that the deceased was earning Rs.3,000/- per month, the Tribunal took only Rs.1800/- per month as income for calculating the compensation. Therefore, the objection of the Insurance Company that the award granted by the Tribunal is high and excessive, cannot be accepted.

12. On a scrutiny of the material, I am of the view that the Tribunal has rightly appreciated the evidence on record and correctly fixed compensation by taking the

earnings of the deceased at Rs.60/- per day and I do not find any grounds to interfere with the findings of the Tribunal.

13. For these reasons, M.A.C.M.A.No.2753 of 2009 is dismissed and M.A.C.M.A.No.1766 of 2014 is allowed. Appellant in M.A.C.M.A.No.1766 of 2014 is entitled to take back the amount deposited by it before the Tribunal. No costs in both the appeals.

14. Miscellaneous Petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

20th March 2015.

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[1] 2013(1) ALD 644 (FB)

[2] (2011) 8 Supreme Court Cases 142