

* THE HON'BLE SMT JUSTICE T.RAJANI

+ MACMA Nos.1933 and 2092 OF 2006

% Dated : 14.07.2017

The New India Assurance Company Limited

..... Appellant

AND

\$ Datla Varma and others

..... Respondents

! Counsel for Appellant : Mr. C.Prakash Reddy

^ Counsel for Respondents : Mr. Y.Sudershan Reddy

Mr. R.K.Suri

Mr. P.Sridhar Reddy

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2009 ACJ 1298 SC
2. (2008) 4 Supreme Court Cases 259



SMT. JUSTICE T.RAJANI**MACMA. Nos.1933 and 2092 of 2006****COMMON JUDGMENT:**

Since the claimant, in both the claim petitions, is one and the same being husband and father of the two deceased, respectively, and arise out of the same accident that occurred on 12.01.2004, they are being disposed of by this common judgment.

Both the appeals are preferred by the appellant herein, New India Assurance Company Limited, who is the 4th respondent in the claim petitions, assailing the judgments of the V Additional District Judge, Ranga Reddy District passed in O.P.Nos.433 and 432, respectively, on 18.05.2006. The grounds on which, MACMA. No.1933 of 2006 is preferred are that the Court below failed to see that the allegations made in the claim petition categorically reveal that the lorry was responsible for the accident and that the negligence is also attributed to the lorry driver but the Court below grossly erred in holding that both, driver of the lorry and the driver of the auto, are responsible to the accident; it also failed to see that according to P.Ws.1 and 2 the auto was not in motion at the time of accident and the lorry came and dashed the stationed auto and that shows that the driver of lorry alone was responsible for the accident and the contra finding of the Court below is not based on any evidence.

Heard the learned standing counsel for the appellant, Insurance Company, and the learned counsel appearing for the claimant.

The learned counsel for the appellant took this Court through the deposition of P.W.2, eye witness of the accident, who, in her chief examination, categorically attributed the negligence to both the vehicles by saying that both the vehicles are responsible for the accident.

But in the cross examination, P.W.2, attributed negligence only to the driver of the lorry. Hence, her evidence becomes unreliable.

The evidence of P.W.1, in his cross examination, shows that he came to know about the accident after its occurrence and later he went to the spot. Hence he cannot be termed as an eye witness. He admitted that the petition is prepared on his instructions and according to him the accident was occurred due to the negligent driving of the driver of the lorry and that there is no fault on the part of the driver of the auto. But the evidence of P.W.1 cannot be solely relied upon as the information that he received with regard to the accident is only hear say and his evidence is inconsistent with the contents of the charge sheet, which shows that the accused who is the driver of auto came from behind along with passengers and was proceeding towards Pudur side in a rash and negligent manner and dashed to deceased No.5 therein and then lost control over the auto and on seeing the Tipper lorry coming in opposite direction at a high speed, with a load of Kankar powder, he jumped by leaving the auto. According to him, the lorry was also coming in high speed, rashly and negligently and dashed to the auto and ran over it, as a result of which, the deceased died in that accident. Hence, it is obvious from the charge sheet that initially there was an accident caused by the auto driver and the same led him into a confusion and in that confusion, by seeing the lorry coming in high speed rashly and negligently, the auto driver jumped and left the auto, leaving the inmates to their fate. If he had been in the vehicle and took precautions, perhaps he could have avoided the accident. By any stretch of understanding, it cannot be said that there was no negligence on the part of the auto driver. The contents of the charge sheet can very well be relied upon as it is a document filed after due investigation. Apart from P.W.2 there are other witnesses cited in the list of witnesses in the charge sheet hence,

I do not feel any necessity to interfere with the judgment of the Court below with regard to the negligence.

With regard to the quantum of compensation, the learned counsel for the appellant contends that the multiplier suitable for the age of claimant, 37 years, would be 15, as per **SARALA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER¹** and the Court below erroneously took the 16 as multiplier. But, as on the date of deciding the O.P., II Schedule was only available for adopting the multiplier, according to which, 16 is suitable multiplier for the age of 37 years. Moreover, if the law standing as on today has to be considered, the age of the deceased is the criteria for a multiplier and then the relevant multiplier would be 17 as per the II Schedule of the Motor Vehicles Act and 16 as per SARALA VERMA (one supra) case. The claim being under a beneficial legislation cannot be defeated on that premise. Hence, in the light of the above observation, the appeal in MACMA.No.1933 of 2006 is liable to be dismissed and is accordingly dismissed.

Insofar as MACMA.No.2092 of 2006 is concerned, the learned counsel for the appellant raises a contention with regard to the correctness of the deduction of 1/3rd made from the income of the deceased towards personal expenses. The learned counsel for the appellant placed reliance on the ruling of the Apex Court in SARALA VERMA (one supra) case wherein the Apex Court at para 15 held as under:

“15.Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend

¹ 2009 ACJ 1298 SC

more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

The learned counsel for the respondent, on the other hand, placed reliance on ruling of the Apex Court in the case of **BILKISH v. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER²** in support of his contention that 1/3rd should be the deduction towards personal expenses of the deceased. To the query that the case in ruling in SARALA VERMA (one supra) being the latest one has to be followed, he contends that the legislation being a beneficial one should be decided based on the precedents, which are in favour of the victims. But, unfortunately, this Court is unable to accept the said contention as the Apex Court in both the rulings dealt with the same legislation which is a beneficial

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(2008) 4 Supreme Court Cases 259

legislation. The law does not carve out any exception with regard to the binding precedents in case of a beneficial legislation. Hence, this Court is bound to follow the latest ruling made by the Apex Court. Therefore, the deduction made by the Court below i.e. 1/3rd towards personal expenses of the deceased, cannot be sustained, more so, due to the reason that there is no additional evidence adduced to allow this Court to deviate from the principle laid down in the SARALA VERMA (one supra) case. The income is stated to be Rs.2,000/- per month and Rs.24,000/- per annum. The lower court deducted 1/3rd and arrived at Rs.16,000/-, as the loss of future income of the claimant. But, now, taking into consideration case one supra, after deduction of 50% the future annual loss of income to the claimant would be Rs.12,000/- and the same multiplied with 16, which is the multiplier relevant for the age of deceased, would make the compensation amount Rs.1,92,000/- instead of Rs.2,60,500/- awarded by the Court below in O.P. No.432 of 2004 which is under appeal in MACMA. No.2092 of 2006. The award of the Court below stands modified by reducing the compensation amount from Rs.2,60,500/- to 1,92,000/-. Rest of the award is left as it is.

In the result, MCAMA. No.2092 of 2006 is partly allowed. There shall be no order as to costs.

JUSTICE T.RAJANI

Date: 14.07.2017

Note: L.R. Copy to be marked Yes/No
B/o.
LSK