SMT JUSTICE T. RAJANI

MACMA.No.1611 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the tribunal below, assailing the judgment of the III Motor Accidents Claims Tribunal, Warangal in OP.No.1049 of 2006 dated 01.03.2008 on the inadequacy of the compensation and for exonerating the insurer from its liability. The grounds are that the insurer was exonerated erroneously due to the driver of the crime vehicle not holding valid driving licence and holding driving licence to drive light motor vehicle (non-transport) whereas the vehicle is a light motor vehicle (transport). The tribunal below also erred in recording the earnings of the deceased and awarded less compensation.

2. Heard counsel for the appellant. None appears for the respondents.

3. The counsel for the appellants, as regards his first contention, that insurer would be liable in spite of the driver not holding valid driving licence as on the date of the accident, relies on the decision of the Supreme Court in S. IYYAPAN v. UNITED INDIA INSURANCE CO. LTD.[1].

4. The law is well settled by now that the failure of the driver of the crime vehicle in having valid driving licence as on the date of the accident shall not absolve the insurer from its liability. In S. IYYAPAN'S case (1 supra) the Supreme Court fixed absolute liability on the insurer and there was no order for recovering the said

[1] 2013 ACJ 1944

amount from the insured. In this case, the driver was having driving licence, though for non-transport vehicle, hence, the aforesaid principle laid down by the Supreme Court applies to this case as well. Hence, it can be quickly concluded that the award has to be satisfied by the insurer jointly and severally along with the insured.

5. The counsel for the appellant, as regards inadequacy of the compensation, points out that 1/3rd was deducted from the income of the deceased instead of 1/4th that has to be deducted in the light of the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] as the dependants are five in number.

6. In SARLA VERMA's case (2 supra) the Supreme Court held that when the claimants are 4 to 6 in number, the deduction towards personal expenditure of the deceased has to be only 1/4th and not 1/3rd. There is not much dispute with regard to the income that was taken by the Court below, which is Rs.3,000/- per month. The Court below, by not believing the evidence adduced with regard to the income, took Rs.3,000/- as the income of the deceased and the same can be taken for computation in this appeal. The multiplier, however, is taken as 16 instead of 15, which is relevant for the age of the deceased. However, as the insurance company is not in appeal, and as there is no argument by the respondents, there shall be no interference in that regard. If 1/4th is deducted from the income of the deceased, the loss of income would be Rs.2,250/- per month and Rs.27,000/- per annum when the same is multiplied by 16, the loss of income would come to Rs.27,000/- x 16 = Rs.4,32,000/-

[2] (2009) 6 SCC 121

and the same is substituted for Rs.3,84,000/- awarded by the Court below under the said head.

7. The counsel also assails the judgment with regard to the amount granted under the head loss of consortium to the first claimant. The Court below awarded only Rs.15,000/- towards loss of consortium. Hence, going by the ratio laid down by the Supreme Court in RAJESH v. RAJBIR SINGH[3] another sum of Rs.85,000/- has to be awarded to the first claimant under the head loss of consortium.

8. The counsel also relies upon a decision of the Supreme Court in ASHA VERMAN v. MAHARAJ SINGH[4] in support of his contention that Rs.1,00,000/- should be awarded towards loss of estate and towards loss of love and affection for each of the children and Rs.50,000/- for loss of love and affection to the parents.

9. In this case, there are three children, who are claimants 2 to 4, hence, Rs.3,00,000/- would be the compensation that has to be awarded towards loss of love and affection to all the said three claimants together and Rs.1,00,000/- is awarded towards loss of estate and Rs.50,000/- is awarded towards loss of love and affection to the mother of the deceased, who is claimant No.5. Hence, in all the claimants are entitled to compensation of Rs.4,32,000/- (loss of income) + Rs.1,00,000/- (loss of consortium) + Rs.3,00,000/- (loss of love and affection to three children) + Rs.1,00,000/- (loss of estate) + Rs.50,000/- (loss of love and affection to parent) = Rs.9,82,000/-, which is beyond the claim made by the claimants.

[3] (2013) 9 SCC 54
[4] 2015 ACJ 1286

10. Though the claim of the claimants is only Rs.6,00,000/-, the learned counsel takes the help of the decision in RAJESH's case (3 supra) again, to contend that the award over and above the amount claimed can be granted if it is found just by the Court. Hence, there shall be an award for the aforementioned amount.

11. This award shall relate back to the date of decree and the compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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T. RAJANI, J

September 14, 2017
DSK