

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

MACMA MP.No.368/ 2014 in MACMA No.2766/ 2012

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M.A.C.M.A.Nos. 848/ 2011 and 2766/ 2012

COMMON JUDGMENT:

These two appeals arise out of the award dated 28.09.2010, passed in O.P.No.9 of 2008 by the learned Chairman, Motor Accidents Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short "the Tribunal"). MACMA No.848 of 2011 is filed by the Insurance Company, who is 2nd respondent in the OP. MACMA No.2766 of 2012 is filed by the claimants being dissatisfied with the award passed by the Tribunal.

The claimants filed the claim petition claiming a compensation of Rs.10,00,000/- on account of death of K.M.Muralikrishna, who died in a motor accident that occurred on 12.11.2007. The claimants are the parents and younger sister of the deceased.

The brief facts of the case is that on 12.11.2007 at about 4.45 p.m the deceased was proceeding on his Motorcycle bearing registration No.AP29-Q4046 along with Ms.Lavanya as a pillion rider from Nagaram towards ECIL and when they reached IBP Petrol Bunk, Chakripluram, Keesara, R.R.District, one Septic Tanker bearing registration No.AP11-W5427 came in opposite direction in a rash and negligent manner with high speed and dashed the motorcycle of the deceased, as a result, the deceased and pillion rider fell down and the deceased died on the spot. The deceased was aged about 27 years, he was hale and health by the time of accident, he was working as Facilitator in DRS International School, Hyderabad and earning Rs.16,000/- per month. In addition to that, the deceased was earning Rs.6,000/- per

month by running tuitions. The 1st respondent in the OP is the owner of the offending septic tanker and the 2nd respondent is the insurer.

The Insurance Company filed the counter denying its liability, manner of accident, age and income of the deceased. It is further contended that the deceased himself was negligent in driving his scooter and he did not have any driving licence.

On behalf of the claimants, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.6. On behalf of the respondents, no oral evidence was adduced, but Ex.B1-insurance policy and Exs.X1 & X2, appointment letter and pay slips were marked.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.9,75,000/- as against the claim of Rs.10,00,000/-.

The Tribunal having taken into consideration the fact that the deceased was working in DRS International School, Hyderabad, has taken the income of the deceased at Rs.16,000/- per month as evidenced from the evidence of PW.3 and also the salary certificates produced by the witness, which are marked as ExsA.6 and X.2. It is also not in dispute that the deceased was highly qualified having did his Master in Science and also B.Ed. The Tribunal has not believed the claim of the claimants about his having income by way of tuitions. Since there is no satisfactory evidence about the income by way of tuitions over and above the salary that finding cannot be said to be erroneous.

The clinching evidence that is produced by the claimants is that the deceased who was highly qualified and a Youngman, aged about 27 years, was working in an International School viz., DRS International Public School at Hyderabad. The evidence of the employer of the deceased and the salary certificates clearly show that the gross salary of the deceased was

Rs.16,000/- per month. Even if Rs.1,000/- is deducted towards statutory deductions, his salary can be taken as Rs.15,000/- per month. Considering the educational qualifications and the age of the deceased, 50% thereof can be added towards future prospects. The total monthly salary can be taken at Rs.22,500/-. This has to be multiplied by 12 ($22,500 \times 12 = 2,70,000/-$). The proper multiplier for the age of the deceased, who was aged 27 years, is '17' and if this is applied, the total comes to Rs.45,90,000/-. Since the deceased was a bachelor, half of it should be deducted towards his personal and living expenses. The net loss works out to Rs.22,95,000/-.

In addition to the above, the claimants are entitled to a sum of Rs.55,000/- towards the conventional heads such as loss of love and affection; loss of estate; transportation charges; funeral expenses etc., and the total amount that can be awarded to the claimants is Rs.23,50,000/-.

The fact that the accident took place in the manner in which it is alleged is not disputed. Even in the appeal filed by the Insurance Company, the only challenge is with regard to the quantum. No other violations are brought out on record for holding that the Insurance Company is not liable to indemnify the insured. The evidence on record clearly establishes that the accident was due to rash and negligent driving of the driver of the crime vehicle which was insured with the Insurance Company and the policy was subsisting as on the date of the accident. Therefore, both the owner of the vehicle and the Insurance Company are jointly and severally liable to pay the compensation to the claimants.

MACMA MP.No.368 of 2014 is filed seeking enhancement of the compensation from Rs.10,0,000/- to Rs.19,50,000/-. The said M.P. is allowed in the circumstances stated.

In the result, the appeal filed by the Insurance Company is dismissed and the appeal filed by the claimants is allowed awarding the compensation as under:-

The appellants are entitled to a total compensation of Rs.23,50,000/- (Rupees twenty three lakhs and fifty thousand only) and the Insurance Company is directed to deposit the same together with interest at 7.5% per annum from the date of petition till the deposit. It should however be made within a period of two months from today. As and when the amount is deposited, the first and second claimants being the father and mother are each entitled to 40% share and the third claimant being the major sister is entitled to 20% share. The claimants are entitled to withdraw the amounts forthwith as and when deposited, after paying the deficit court-fee.

Miscellaneous petitions, if any, pending in these appeals, shall stand closed.

Date: 29th June, 2017
Dsr/smr

M.S.K.Jaisw al, J

