SMT JUSTICE T. RAJANI

MACMA.No.918 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the I Additional District Judge, Chittoor in OP.No.79 of 2000 dated 16.01.2006 on the grounds that the Court below awarded inadequate compensation of Rs.1,43,000/- as against the claim of Rs.5,00,000/-.

2. Heard the counsel for the appellant. None appeared for the second respondent. The appeal against respondent No.1 is dismissed. Counsel for the appellant in support of her contention that in spite of dismissal of appeal against respondent No.1, the appeal is maintainable against respondent No.2, relied on a decision of a Division Bench of this Court in MEKA CHARKA RAO v. YELUBANDI BABU @ REDDEMMA[1] wherein it was held even if the appeal is dismissed against the owner of the vehicle, the question of statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal recorded a finding that the accident has taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the Insurance Company. Hence, in this case, the dismissal of appeal against respondent No.1 shall not hold this Court from deciding the appeal.

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[1] 2001 (1) ALD 453 (DB)

3. With regard to the inadequacy of the compensation, the counsel for the appellant contends that the claimant sustained three fracture injuries and underwent treatment in several hospitals but the Court below awarded Rs.70,000/- towards the fracture injuries and also towards permanent disability of 10.5%, which was stated by P.W.3, who is the doctor in the Department of Orthopaedics, C.M.C Hospital, Vellore. In fact, the Court below considered the injuries 2, 3 and 8 as grievous injuries but injuries 2, 3 and 4 are the fracture injuries i.e. closed fracture middle 1/3rd right clavical; closed fracture body of right scapula and closed fracture both bones right forearm middle 1/3rd respectively, which are grievous injuries and injury No.8 is laceration over right cheek, which is a simple injury. The Court below did not take pains to make a scientific calculation with regard to the compensation awarded towards pain and suffering caused by the injuries and the permanent disability and awarded a lump sum of Rs.70,000/- towards both heads, which in the considered opinion of this Court is not proper and sustainable.

4. The injuries 2, 3 and 4, being fracture injuries, can be compensated with an award of Rs.25,000/- each, as such, the amount of Rs.70,000/- is enhanced to Rs.75,000/- and awarded towards pain and suffering. The Court below awarded Rs.10,000/- towards simple injuries, which needs no interference. The income of the claim, as reflected in Ex.A12, income tax returns, is Rs.60,000/- per year. The Court below did not disbelieve the said evidence and did not make any observation with regard to the said income, hence, Rs.5,000/- has to be the monthly income of the claimant. The Court below did not

award any amount towards loss of income during the period of treatment, rest and recovery. The injuries would suggest that the claimant might have been unable to attend his work for at least a period of three months. Hence, Rs.5,000/- x 3 = Rs.15,000/- is awarded for loss of income during the period of treatment, rest and recovery.

5. The medical expenditure, evidenced by Ex.A6, is to an extent of Rs.83,000/- but the Court below, for no mentioned reasons, awarded only Rs.60,000/-. When the medical expenditure is proved by medical bills and is testified by P.W.3, there need not be any reason to disallow the said bills. Hence, the balance of Rs.23,000/- is also awarded towards medical expenditure, evidenced by Ex.A6. The Court below awarded Rs.3,000/- towards transportation, attendant charges, extra nourishment etc. The said amount can be enhanced by another Rs.7,000/-, as the fracture injuries, which the claimant sustained, might have required special transportation to and from the hospital. With regard to the disability sustained by the claimant, which was assessed at 10.5% by P.W.3, the Court below, after considering the said disability, did not, as already observed, make any scientific calculation as to effect of the said disability on the avocation and future income of the claimant. The loss of income caused by the disability to an extent of 10.5% would be Rs.5,000/- x 10.5% = Rs.525/- per month and Rs.6,300/- per annum. The age of the claimant is stated to be 48 years for which the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA v. DELHI

TRANSPORT CORPORATION[2] is '13'. Hence, Rs.6,300/- x 13 = Rs.81,900/- is the compensation that has to be awarded for loss of future income on account of disability and is as such awarded. In all, the claimant is entitled to compensation of Rs.5,000/- + Rs.15,000/- + Rs.23,000/- + Rs.7,000/- + Rs.81,900/- = Rs.1,31,900/-.

6. In the result, the award of the Court below stands enhanced by Rs.1,31,900/-, as indicated above, working out the total compensation to Rs.1,43,000/- (awarded by the Court below) + Rs.1,31,900/- = Rs.2,74,900/-, which is rounded off to Rs.2,75,000/- and the rest of the award is left uninterfered with. This award shall relate back to the date of decree and the enhanced amount 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

July 27, 2017
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[2] (2009) 6 SCC 121