SMT JUSTICE T. RAJANI

MACMA Nos.1042 of 2012 AND 1810 OF 2014

COMMON JUDGMENT:

MACMA.No.1042 of 2012 is preferred by the appellants/claimants before the court below, while MACMA No.1810 of 2014 is preferred by the appellant/insurance company, who is the second respondent before the court below, assailing the judgment, dated 08.07.2008, passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, in OP.No.1388 of 2007.

2. For the sake of convenience, the parties would be referred to as claimants and 2nd respondent, as they were arrayed before the court below.

3. Heard both sides.

4. While the appeal filed by the 2nd respondent is on the ground that the contributory negligence aspect was not considered by the court below, though the evidence with regard to the triple riding has very much come before the court below, the claimants assailed the judgment on the aspect of inadequacy of the compensation.

5. With regard to the aspect of negligence, the contention of the counsel for the second respondent is that the evidence is clear that the deceased was going on a motor cycle along with two others and the triple riding itself would prove the

contributory negligence on the part of the rider of the motor cycle.

6. Even if it is accepted that the accident occurred due to the negligence of both the drivers, it would be a case of composite negligence as the deceased is not stated to be the driver of any of the two vehicles. In such a case, the claimants would have an option to sue any of the joint tortfeasors. The negligence, which was concluded against the driver of the crime vehicle, cannot be held to be with a wrong approach. Hence, the appeal of the 2nd respondent fails.

7. With regard to the compensation, the court below took the income of the deceased as Rs.10,000/- per month. But the counsel for the claimants fairly concedes that the income has to be only Rs.9,600/-, in view of the ruling of this court reported in *B. Ramulamma and others vs. Venkatesh Bus Union and another* [1] wherein it was held that for an engineering student of final year, the income can be taken as Rs.12,000/- per month and since the deceased in this case, being a first year student, 20% has to be deducted from the said notional income and then the monthly income would only come to Rs.9,600/-. Hence, the same is accepted.

8. The Supreme Court in *National Insurance Co. Ltd. V. Pranay Sethi* [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] held that the future hike in the income of the deceased also has to be considered. In the case on

[1] 2011 ACJ 1702

hand, the future hike, according to the above ruling, would be 40%. Then the monthly income would come to Rs.13,440/- {Rs.9,600/- + [Rs.9,600/-X40/100)}. Since the deceased is a bachelor, as per the ruling of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation*[2], 50% has to be the deduction towards personal expenditure. Thereby, the loss of monthly income would come to Rs.6,720/- and the loss of annual income comes to Rs.80,640/-. The same multiplied with '18', which is the multiplier relevant for the age of the deceased as per the ruling of Sarla Verma's case (supra),would come to Rs.14,51,520/-. Hence, the said amount is awarded under head loss of future income.

9. Apart from the above, following *Pranay Sethi's* case (supra), Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.14,81,520/-, {Rs.14,51,520/- (loss of future income)+ Rs.15,000/- (loss of estate) + Rs.15,000/- (funeral expenses)} rounded off to Rs.14,82,000/-, with proportionate costs.

10. Hence, the claimants are entitled to total compensation of Rs.14,82,000/- with proportionate costs. The apportionment of compensation shall be made in the same proportion as made by the Court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry

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[2] (2009) 6 SCC 121

interest at the rate specified and from the time indicated in the award by the Court below.

Accordingly, the MACMA.No.1042 of 2012 is partly allowed with proportionate costs and MACMA.No.1810 of 2014 is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 19, 2017
LMV