SMT. JUSTICE T.RAJANI

MACMA. Nos.2200 of 2009 and 774 of 2008

COMMON JUDGMENT:

Since both these appeals arise out of same award passed in MVOP. No.22 of 2005, they are being disposed of by this common judgment.

Appeal No.2200 of 2009 is preferred by the appellant, National Insurance Company Limited, who is respondent No.2 before the Court below, questioning the award of the VII Additional District Judge, Madanapalle, passed in MVOP. No.22 of 2005 on 01.11.2007. The ground on which the award of the Court below is assailed is that the claimant failed to implead the owner and insurer of the car in which he was traveling and that fixing liability on the owner and insurer of the crime vehicle merely because the owner did not contest is erroneous.

Heard the learned counsel on either side and perused the material on record.

At the hearing, though in the grounds of appeal, only one ground was raised; the counsel also wanted to assail the award on the adequacy of compensation. The first ground, however, on which he emphasized is with regard to the fixing liability on the respondents in spite of observing that the negligence was there on the part of the Ambassador car. The conclusion of the Court below on the aspect of negligence was that the owner of the lorry and its Insurer i.e. the appellant are liable as there is no contest from the first respondent owner of the offending lorry. Though on the facts of the case the conclusion seems to be right, reasoning however, did not go on proper lines. This being the first appeal the whole evidence can be re-evaluated and conclusion can be sustained if the material on record would give scope for another reasoning than the one given by the Court below.

The narration of the accident which came through the mouth of the claimant himself, shows that he was traveling in the Ambassador car along with others and on the way a lorry, i.e. the offending vehicle in this case, overtook their Ambassador car and suddenly applied breaks due to which the Ambassador car went and hit the offending lorry on its back side and got stuck under the offending vehicle. After the car was dragged to a distance of three kilometers, on hearing the cries of the claimant and others, the driver of the offending lorry stopped the lorry. There is absolutely no scope for any one to assume that there was any negligence on the part of the driver of the Ambassador car. Even the report, which is given by the driver of the Ambassador car, is on the same lines as stated by P.W.1. Absolutely there is no inconsistency between the oral and documentary evidence. The Court below, however, assumed that unless there is some negligence on the part of the Ambassador car it would not have got stuck underneath the lorry. But the above reasoning can be sustained, if the lorry had been going ahead of the car from the beginning and when the driver of the Ambassador car is required to maintain sufficient distance between itself and the vehicle going ahead. But here the narration shows that the lorry overtook the Ambassador car and then applied sudden breaks thereby no scope and time, for the Ambassador car to keep sufficient distance, can be assumed as left. Hence, under such circumstances, absolutely no negligence can be attributed to the driver of the Ambassador car.

The conclusion drawn by the Court below simply based on the fact that the owner did not contest and hence is liable, however, cannot be sustained. But the conclusion based on the facts of the case as evaluated above can nevertheless be sustained.

The claimant preferred MACMA. No.774 of 2008 questioning the inadequacy of the compensation granted by the Court below and on the other hand, the learned standing counsel appearing for the Insurer of the offending lorry would contend that the compensation awarded by the Court below is exorbitant.

With regard to the adequacy of compensation, as contended by the learned standing counsel for the Insurance Company, this Court does not find that the compensation awarded is exorbitant. As could be seen from the record, the claimant sustained as many as seven injuries, five of which are fracture injuries and one injury resulted in loss of seven upper teeth and eight lower teeth. The Court below observed that three doctors were examined, who gave three different percentages of disability. The said percentages given by the respective doctors have to be taken as to be in relation to the injury which was treated by them. One witness who is a dental surgeon gave 50% as the disability, PW.4, who is a plastic surgeon, stated 80% to be the disability, PW.5, a dental surgeon stated it to be 45 to 50%. There was facial dis-figuration to the claimant. The Court, by expressing that it is difficult to arrive at the exact extent of disability, however did not award any amount for the said disability. It awarded amounts only to the injuries. Rs.25,000/- was awarded towards dis-figuration of face. Rs.50,000/- was awarded towards loss of ten teeth, which cannot be considered as exorbitant. Rs.10,000/- was awarded for nasal bone fracture, Rs.10,000/- was awarded for pain and suffering and another Rs.20,000/- was also awarded without specifying as to under what head the said amount is awarded. Rs.5,500/- was awarded for the fracture of right ulna and Rs.5,500/- was also awarded for fracture of end of right radium. Though the manner in which the awards are granted is not very clear, it can be seen that the awarded amount ultimately takes care of the injuries and part of the disability. It did not award any amount towards loss of future amenities which an all probability would result from loss of teeth. Hence, the grievance if any can be that of the claimant but not the insurer.

It is already observed that the evidence with regard to the disability is inconsistent and hence, the Court below expressed its helplessness to make a scientific calculation of the loss caused due to such disability. The award shows that for loss of teeth Rs.50,000/- was awarded; for dis-figuration Rs.25,000/- was awarded; and salary for the leave period was also awarded; for nasal bone fracture a sum of Rs.10,000/- was awarded; medical bills under Ex.A-5 were accepted; Rs.5,000/- was awarded towards transportation charges; Rs.10,000/- was awarded towards extra nourishment; in addition to the awards made in respect of the injuries. A sum of Rs.20,000/- was awarded towards pain and suffering. Hence, the awards made towards pain and suffering and injuries are more than adequate. But for the fracture of right ulna and fracture of end of right radius Rs.5,500/- each was awarded, respectively, which can be considered as low and the same is enhanced to Rs.15,000/- each.

The Court below by considering the inconsistency in the evidence regarding number of visits to Bangalore hospital, awarded only Rs.5,000/- towards transportation but another Rs.5,000/- was awarded towards transportation. The evidence of the Doctor, P.W.4, is that the claimant went to Bangalore four times and even if that is considered, the transport expenditure needs to be enhanced by at least another Rs.10,000/- and is accordingly enhanced. The Court below rightly declined to award any amount towards loss of marriage prospects by considering that the petitioner is aged 40 years.

To the extent indicated above, award of the Court below is modified.

With the above, the appeal preferred by the Insurance Company i.e. MACMA. No.2200 of 2009 is dismissed and the appeal preferred by the claimant i.e. MACMA. No.774 of 2009 is partly allowed with proportionate costs.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

JUSTICE T.RAJANI

Date: 10.10.2017
LSK