THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2656 of 2009

JUDGMENT:

This appeal is filed by insurance company, the respondent No.2 in O.P.No. 816 of 2004 against the award dated 23.8.2007 passed by the Motor Accident Claims Tribunal (District Judge), Nizamabad in the aforesaid OP whereby it awarded compensation of Rs.10,86,000/- to the petitioners with interest @ 7.5% P.A.

The averments made in the aforesaid OP are briefly stated as follows,

Petitioner No.1 is the wife, petitioners 2 and 3 are the children of the deceased Botakwar Swamy, who was aged 45 years at the time of accident. He was working in Municipal Corporation, Mumbai on a monthly salary of Rs.15,000/- and used to do cloth business and earn Rs.10,000/- per month. It is asserting by mentioning that on 24.4.2004 while the deceased along with others was traveling in an auto bearing No. AP 25 U 6698 from Jangampally to Domakonda, at about 10.00 A.M., when the auto reached outskirts of Jangampally, near Sai Baba temple, on Nagpur to Hyderabad National High Way No. 7 road, a lorry bearing No. HR-55/A-8266 came opposite to the auto in a rash and negligent manner, with high speed and dashed the auto. The above mentioned accident resulted in damage to the auto and that the deceased Botakwar Swamy received multiple fractures and crush injuries and died on the spot. On account of the accident, the life of the deceased who was hale and healthy was shortened, and that the petitioners who were depending on his income were put to hardship. Hence the petitioners filed the aforesaid OP claiming compensation of Rs.20,00,000/- as against the respondents 1 and 2 who were the owner and insurer of the lorry bearing No. HR-55/A-8266 which caused the aforesaid accident.

Respondent No.1-owner of the lorry filed his counter denying the averments mentioned in the petition and contended that the accident occurred due to the negligence of the driver of the auto, and that the petition is bad for non-joinder of owner and insurer of the auto. It was contended by the first respondent that his lorry was insured with the respondent No.2 and that the policy was in force at the material point of time. Hence the 2nd respondent alone is to be held liable to pay compensation as it has agreed to indemnify his liability by virtue of the policy taken by him in respect of the lorry bearing No. HR-TT/A-8266.

Respondent No.2-insurance company filed its counter denying the assertions made in the OP with regard to age, income, occupation, manner of accident and contended that both vehicles involved in the alleged accident and there was contributory negligence on the part of drivers of both the vehicles, as such the owner and insurer of the auto were also the necessary parties to the petition. It was contended that the alleged accident occurred due to the rash and negligent driving of the auto and that the driver of the auto was not having valid driving licence to drive the auto. The respondent No.2 further contended that the alleged accident occurred due to the mechanical defect of the lorry belonging to the respondent No.1 and that the driver of the lorry was not holding valid driving licence and the compensation claimed by the petitioners under various heads is excessive, arbitrary and finally prayed for dismissal of the claim petition.

Before the Tribunal, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. The respondent No.2 examined R.W.1 and marked Ex.B1 policy.

The Tribunal, on appreciation of the oral and documentary evidence available in the case record, passed the award in favour of the respondents-claimants 1 to 3 awarding compensation of 10,86,000/-. Aggrieved thereby, the insurance company which has been arrayed as respondent No.2 in OP No. 816 of 2004 has come up with the present appeal.

The main contention of the appellant-insurance company is that the Tribunal, relying on Ex.A7-pay slip and Ex.A8- certificate issued by the Municipal Corporation of Greater Mumbai, wherein the annual salary particulars of the deceased for a period from April, 2003 to February, 2004 are mentioned as Rs.1,24,275/-, has assessed the income contribution of the deceased to his family at Rs.82,000/- per annum after deducting one third of his income towards his personal expenditure. The Tribunal, instead of assessing the annual dependency of the claimants, considering his net salary particulars mentioned in Ex.A7, has relied on Ex.A8 and such assessment is contrary to settled principle of law which says that the net income of the deceased is to be taken into consideration while computing the compensation etc. The next contention of the appellant-insurance company is that the Tribunal has applied a wrong multiplier of ‘13’. It is also contended by the appellant-insurance company that at the time of the accident the auto was carrying eight persons and that the driver of the auto also contributed for the occurrence of the accident and that the Tribunal, without proper appreciation of the aforementioned aspect has passed the award granting compensation of

Rs.10,86,000/-. These are the specific pleas of defence raised by the insurance company to challenge the award passed by the Tribunal.

The claimants in OP got examined one Debba Srisailam as P.W.2 who was described as eye-witness to the accident in Ex.A2-charge sheet. The Tribunal, on appreciation of the evidence given by P.W.2 and also Ex.A1-FIR and Ex.A2-charge sheet, came to the opinion that the accident dated 24.4.2004 occurred due to the negligent driving of the lorry bearing No. HR-55/A-8266 by its driver. The fact which is not in dispute is that the police of Bikanur registered a criminal case against the driver of the lorry and filed charge sheet against him after due investigation of the case filed against him. Though a stand was taken by the insurance company before the Tribunal that the driver of the lorry was not responsible for the accident and there was mechanical defect etc., it did not produce oral or documentary evidence to prove that the mechanical defect in the lorry was one of the causes for the occurrence of the accident. Ex.A5-Motor Vehicle Inspector's report clinchingly establishes the fact that there was no mechanical defect as such.

The respondents in OP have not examined the driver of the lorry or any other witness to prove their contention that there was no negligence on the part of the driver of the lorry and that the driver of the auto was at fault. Absolutely no evidence is there in record to disbelieve the evidence of P.W.2 who in clear terms deposed that due to the negligent driving of the lorry bearing No. HR-55/A-8266, the accident in question had taken place. The insurance company has examined R.W.1-P. Hemanth Kumar and marked Ex.B1-insurance policy. The witness examined by the insurance company before the Tribunal is not an eye-witness to the accident and he seems to have reiterated the contentions raised by the insurance company in its counter and except denial of the suggestions that the accident occurred due to the fault of the driver of the lorry and that three passengers were traveling in the auto at the material point of time, no evidence of any nature was adduced by the appellant-insurance company to prove its contention that the auto was carrying eight persons at the relevant point of time. The Tribunal, relying on the evidence of P.W.2 and Exs.A1 to A5, arrived at a right conclusion that the accident dated 24.4.2004 which resulted in the death of the deceased had occurred due to the negligent driving of the lorry bearing No. HR-55/A-8266 by its driver.

Coming to the second other contention raised by the appellant-insurance company regarding the quantum of compensation awarded by the Tribunal, the appellant's contention is that the multiplier of '13' applied by the Tribunal is not the correct multiplier and according to it, multiplier of '11' may have been applied, but not '13'. The learned counsel for the respondents 1 to 3-claimants contends that as per judgment of the Apex Court reported in *Sarala Varma Vs. Delhi Transport Corporation* [1] the multiplier of '13' applied by the Tribunal is the correct multiplier. The Municipal Corporation of Greater Mumbai where the deceased was working prior to his death had issued certificate-Ex.A8 in respect of his annual income. The Tribunal, on consideration of the income particulars of the deceased mentioned in the said certificate and on deducting one third of his income towards his personal expenditure, had rightly assessed the loss of annual income at Rs.82,000/-. This Court has not noticed any reason to discard Ex.A8 where the annual income particulars of the deceased are mentioned. The Tribunal, on appreciation of the oral and documentary

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[1] AIR 2009 SC 3104

evidence, particularly Ex.A5 and other relevant documents, has rightly awarded compensation of Rs.10,86,000/-, and this Court finds that no substantial grounds are made out by the appellant-insurance company to dissent from the view taken by the Tribunal for awarding compensation of Rs.10,86,000/-. The award passed by the Tribunal, in my considered opinion, is not suffering from serious infirmity and the same needs no intervention.

For the above reasons, the appeal filed by the insurance company fails and the same is hereby dismissed. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

JUSTICE J. UMA DEVI

Dt.22.9.2017
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