SMT JUSTICE T. RAJANI

MACMA.No.1968 of 2011

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the Principal District Judge, Rajahmundry in OP.No.436 of 2007 dated 07.04.2009 on the grounds that the Court below did not properly appreciate the evidence on record and it ought to have seen that Ex.A1, FIR and Ex.A5, charge sheet shows that respondent No.1 is responsible for the accident; the Court below ought to have seen that the deceased was crushed under the APSRTC bus driven by the first respondent; the Court below ought to have taken the income of the deceased as Rs.150/- per day and the Court below having held that the accident occurred due to the negligent act of the auto, ought to have seen that the auto driver is having valid driving licence.

2. Heard both sides.

3. The counsel for the appellants contends that the Court below ought to have at least made an order of pay and recovery against respondent No.2, as the driver was nevertheless holding a driving license to drive a light motor vehicle. The driver, in this case, was driving a transport auto.

4. Similar contention as raised by the counsel for the appellants was dealt with by this Court in MACMA.Nos.484 and 486 of 2008 dated 17.03.2017 wherein it was held as under:

> "The admitted fact is that the driver was holding the driving licence for light motor vehicle non transport.

The light motor vehicle is defined in Section 2 clause 21 as *meaning a transport vehicle, the unladen weight of which, does not exceed 7,500 kilograms.* By virtue of that the transport vehicle, gets included in the definition of light motor vehicle. The observation of the lower Court, with regard to the weight of the vehicle, is that no evidence is adduced in that regard. Hence on the failure of the appellant to prove the weight of the vehicle, the vehicle has to be construed as a light motor vehicle, below the weight of 7,500 kilograms. In such circumstances, the driver of the crime vehicle stands holding valid driving licence as on the date of the accident.

In the case of *S.IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER* [(2013) 7 SCC 62] the Apex Court had categorically held *"The insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of amount in the event there has been violation of any condition of the insurance policy."*

Hence, the fourth respondent would also be liable along with respondent No.3 jointly and severally.

5. The counsel for the appellants, with regard to quantum, contends that 1/3rd deduction made towards personal expenditure of the deceased is not appropriate and that 1/4th has to be deducted, as the claimants are five in number, as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1].

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1 (2009) 6 SCC 121

He also contends that adequate amounts were not awarded towards loss of consortium and funeral expenses.

6. The judgment of the Court below shows that Rs.2,000/- was taken as monthly income of the deceased, which is not disputed by the appellants' counsel. After deducting 1/4th towards personal expenses, Rs.1,500/- would be the loss of monthly income and Rs.1,500/- x 12 = Rs.18,000/- would be the loss of annual income. There is no dispute with regard to the multiplier, hence, Rs.18,000/- x 15 = Rs.2,70,000/- would be the loss of future income to the claimants. Rs.15,000/- was awarded towards loss of estate, which need not be interfered with. Apart from the above, Rs.40,000/- is awarded towards loss of consortium to the first claimant and Rs.15,000/- is awarded towards funeral expenses as per the ruling of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017). Hence, in all the claimants are entitled to total compensation of Rs.3,40,000/- with proportionate costs. The enhanced compensation shall be apportioned among the claimants in the same proportion as per the award of the Court below. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

November 30, 2017
DSK