HONOURABLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A. Nos. 1274 and 1356 of 2010

COMMON JUDGMENT:

These appeals can conveniently be disposed of by this common judgment inasmuch as they arise out of one and the same accident and Award passed thereon.

M.A.C.M.A.No.1274 of 2010 is preferred by the Bajaj Allianz General Insurance Company Limited aggrieved over the quantum of compensation awarded by learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Mahabubnagar, at Gadwal in the Award and decree dated 31.03.2010 passed OP.No.515 of 2007; whereas M.A.C.M.A.No.1356 of 2010 is preferred by the claimants aggrieved by the inadequacy or otherwise of the compensation awarded by the Tribunal in the aforesaid Award.

For the sake of convenience, the parties herein are referred to as arrayed before the Tribunal.

Thumbnail sketch of the facts of the case are that: On 19.05.2007 when one Yeddula Babu along with one Pratap Rao going to Gadwal in order to give food to his wife who was admitted in the Govt. Area Hospital, Gadwal for treatment, and when they reached R&B Guest house at Gadwal, one auto bearing No.AP22W1465 being driven by its driver in rash and negligent manner, hit the Yeddula Babu from his back, as a result of which, he fell down and sustained grievous injuries. He was shifted to Govt. Area Hospital, Gadwal and from there to Government General Hospital, Kurnool and on 28.05.2007 he died in the hospital while undergoing treatment. The said auto was owned by the first respondent and insured with second respondent. It was averred in the claim petition that the deceased was hale and healthy and was earning Rs.60,000/- per annum from agriculture and due to sudden death of the deceased, the claimants lost their breadwinner, love and affection and suffered mental agony. Hence the claim petition for compensation of Rs.5,00,000/-.

Before the tribunal, the owner of the crime auto contested the claim stating that the driver of the auto was responsible for the accident and therefore he is not liable to pay any compensation. The Insurance company contested the claim petition denying the averments made in the claim petition . It was further averred that the driver of the auto was not holding the valid licence and that the first respondent violated the terms and conditions of the policy.

In order to prove the claim, P.Ws. 1 and 2 were examined and Exs.A.1 to A.9 were got marked on behalf of the claimants. R.Ws. 1 and 2 were examined and Exs. B.1 to B.4 were marked on behalf of the respondents.

On a scrupulous consideration of the evidence brought on record, the Tribunal found that the accident occurred due to rash and negligent driving of the crime auto by its driver. Then the Tribunal assessed the compensation payable to the claimants at Rs.11,82,000/- together with interest at 7.5% per annum from the date of the petition till the date of deposit/realization.

Aggrieved by the said award, the claimants preferred MACMA.No.1356 of 2010 contending that the Tribunal did not properly take into consideration the income of the deceased at Rs.15,000/- per month who was doing agriculture and running a diary farm and with the said income, he was maintaining the family consisting of wife, daughter and aged mother. Learned Counsel for the claimants submits that the compensation awarded by the Tribunal at Rs.1,82,000/- is too meager and inadequate.

On the other hand, the second respondent-Insurance Company preferred MACMA No.1274 of 2010 contending that there was violation of terms and conditions of the policy inasmuch as the driver of the auto was possessing learner licence, but not a effective driving licence to driver the auto.

Having heard the learned Counsel on either side and perused the material on record, what is required to be considered inasofar as the contention of the Insurance Company is that when a person is holding to drive light motor vehicle is also competent to drive transport vehicle of the same body and category. That apart in the policy Ex. B.1, it was clearly mentioned that any person including the insured holding an effective learner’s licence may also drive the vehicle. In view of the same, the contention of the respondent-Insurance Company is rejected.

Learned Counsel for the claimants submits that the deceased was earning Rs.15,000/- per month by doing agriculture and running dairy farm. But, no evidence was adduced to prove the income of the deceased. No document is filed to prove that the deceased was cultivating the land and getting agricultural income every year. However, it is to be seen that even in any non organized sector, a person can earn minimum of Rs.3,000/- per month and above. Therefore monthly income of the deceased can be taken at Rs.3,000/- per month or Rs.36,000/- per annum. If 1/3rd is deducted towards his personal expenses, the contribution to the family would arrive at Rs.2000/- per month or 24000/- per annum. The appropriate multiplier applicable to the age of the deceased is '17' and if the same is applied, loss of dependence would come to Rs.24,000 x 17 =Rs,4,08,000/-. In addition to the same, the claimants are entitled to Rs.5,000/- towards funeral expenses, Rs.30,000/-towards consortium, Rs.10,000/- towards pain and suffering and Rs.3,000/- towards transport charges inasmuch as the accident occurred on 19.5.2007 and deceased died on 28.5.2007. In total, the claimants are entitled to receive the compensation of Rs.4,56,000/-.

The Insurance Company-second respondent shall deposit the said amount together with interest at 7.5% per annum from the date of petition till realization, within three months from today.

As and when the said amount is deposited, the first claimant-wife of the deceased is entitled to withdraw 50%, third claimant-mother of the deceased is entitled to withdraw 20% and remaining 30% which is apportioned to the second claimant, who being the minor, shall be kept in fixed deposit of any nationalized bank till she attains majority.

Accordingly, the appeal–MACMA No.1274 of 2010 is dismissed, and appeal-MACMA.No.1356 of 20010 is partly allowed, modifying the Award and decree dated 31.03.2010 passed in OP.No.515 of 2007 by learned Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Mahabubnagar, at Gadwal.

Miscellaneous petitions pending consideration if any in the appeals shall stand closed in consequence.

JUSTICE M.S.K. JAISWAL

DATED 27TH JULY, 2017.
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