THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

MACMA No. 1398 of 2010

JUDGMENT:

This appeal is preferred by the Insurance Company questioning the Order and Decree, dated 17.04.2009 in OP.No.351 of 2007 on the file of the Principal Motor Accidents Claims Tribunal (Principal District Judge), Nellore, by and under which the Tribunal awarded a total compensation of Rs.8,50,670/- as against the claim for Rs.15,00,000/- for the death of the deceased – Malapati Murali Mohan, aged about 23 years, in the accident that is said to have taken place on 13.08.2005

2. The brief facts of the case are that the deceased was working as Assistant Professor in NBKR Institute of Science and Technology, Vidyanagar and drawing a salary of Rs.13,520/- per month. On 13.08.2005, while the deceased along with his brother, the 2nd respondent herein, was proceeding to Nellore from Gudali on a Hero Honda Motor cycle, and about 8.30 when they reached QUBA Engineering College at Venkatachalam on NH-5 road, a tractor and trailer bearing Nos.AP26T-5504 and AP26T-5506 respectively, being driven by its driver in a rash and negligent manner at high speed, came in the opposite direction on wrong side, and dashed the motor cycle, due to which the deceased, the rider of the motor cycle sustained grievous injuries and died on the spot, whereas the pillion rider sustained simple injuries.

3. The 1st respondent filed a counter denying the claim and contending that the offending tractor was duly insured with the 2nd

respondent under a valid policy and the driver of the vehicle was having valid driving licence on the date of accident, and therefore the liability of the 1st respondent, if any, has to be indemnified by the 2nd respondent.

4. The 2nd respondent/Insurance Company filed its counter denying the rashness and negligence attributed to the driver of the tractor, and denied the insurance of the vehicle, and prayed for dismissal of the claim petition.

5. During the course of trial, on behalf of the claimant PWs.1 to 3 were examined, and Exs.A1 to A.11 were marked. No oral evidence was adduced on behalf of the Respondents; however, Ex.B-1, certified copy of the Policy was marked. The Tribunal, after taking into consideration the entire oral and documentary evidence on record, determined the compensation at Rs. 8,50,670/-. Aggrieved by the same, the present appeal is preferred by the Insurance Company.

6. The learned counsel for the appellant/Insurance Company submits that the Tribunal has erred in taking the gross-salary of the deceased, who was just employed as Assistant Professor and also erred in deducting 1/3rd towards personal and living expenses of the deceased, as against requirement of deducting at 50%, since the deceased was a bachelor. Further, the Tribunal has determined the compensation at higher side and the same is excessive and erroneous. Hence, the present appeal seeking interference.

7. The learned counsel appearing for the respondents/claimants submits that even if the income, as spoken to by the claimant has taken into consideration, and if the proper multiplier is applied by following the well settled law, the claimant will get compensation far exceeding Rs.14,00,000/- and the Tribunal has erred in granting the compensation only at Rs. 8,50,670/- by applying the wrong multiplier and also taking the age of the father of the deceased in consideration while computing the loss of dependency as against the requirement of taking the age of the deceased for the said purpose.

8. Having heard both the parties and perusing the material on record, it is noticed that the fact of the accident having taken place on the date, time, place and the manner in which it is occurred as spoken to by the claimant, and the same is not in dispute. Similarly, the liability of the Insurance Company to pay the compensation is also not in question. The only grievance of the appellant-Company is that the quantum of compensation granted by the Tribunal is not proper. The evidence that has been produced, both oral and documentary, comprises of PW-3, the employer of the deceased and the salary certificate under Ex.A-3 shows that the deceased was having the gross salary of Rs.13,500/- and take home salary of Rs.12,600/-. The documents also show that the deceased was having a Master degree of Engineering in Electronics and Control Engineering branch. The certificates further show that he is an intelligent person and has secured first class from SSC to Engineering. Therefore, it can be safely concluded that the deceased was having great future prospects and his accidental death

at the age of 23 years has completely shattered his future prospects. The Tribunal has taken into consideration the income of the deceased at Rs.13,520/- and taking the age of the father of the deceased the multiplier of 7.5 was adopted, which is erroneous. As a matter of fact, the proper computation works as under:

Salary of the deceased i.e., Rs.13,500/- per month, multiplied by 12 months comes to Rs.1,62,000/-. The proper multiplier applicable is '18'. Hence, Rs.1,62,000/- x 18 comes to Rs.29,16,000/-; less 50% towards personal and living expenditure, which comes to Rs.14,58,000/-. In addition to this, the claimants re also entitled to conventional amounts, but, however, since the claimants have not preferred any cross-appeal, that aspect need not be gone into. Therefore, it is to be held that the Tribunal had determined the just and reasonable compensation, which do not warrant interference, as contended by the learned counsel for the appellant/Insurance Company. Therefore, there are no merits in the appeal, and the same is liable to be dismissed.

9. With regard to the apportionment, the Tribunal has directed that 2nd petitioner/claimant, who is the brother of the deceased is entitled to Rs.1,50,670/-; whereas the 1st respondent/claimant, father of the deceased was entitled to Rs.7,00,000/- together with proportionate interest. However, it is reported that during the pendency of the present appeal, the 2nd respondent/claimant, brother of the deceased also died on 16.11.2010, and proof to that effect has been produced. In that view of the matter, the entire

compensation amount is directed to be paid to the 1st respondent/ claimant, father of the deceased.

10. In the result the appeal is dismissed, and the order and decree of the Tribunal under challenge is confirmed in all aspects, except to the extent indicated above with regard to the apportionment. Consequently, the pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M.S.K.JAISWAL, J

Date: 21.06.2017
Kv

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

MACMA No. 1398 of 2010

JUDGMENT

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