SMT JUSTICE T. RAJANI

MACMA Nos.897 of 2011 and 1733 of 2012

COMMON JUDGMENT:

MACMA.No.897 of 2011:

This appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the XXI Additional Chief Judge, Hyderabad in MVOP.No.747 of 2008 dated 13.08.2010 on the grounds that the driver of the crime vehicle was not holding appropriate driving licence to drive the vehicle, which is a tractor and that he was holding driving licence to drive light motor vehicle for non-transport while the tractor is a transport vehicle.

2. Heard both sides.

3. As regards to contention that the driver was not holding appropriate license to drive the vehicle, this Court in MACMA.Nos.484 and 486 of 2008 dated 17.03.2017, 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*."

4. The counsel for the respondents/claimants relied on a decision of the Supreme Court in MUKUND DEWANGAN v. ORIENTAL INSURANCE CO. LTD.[1] wherein it was held that a person holding driving licence to drive 'light motor vehicle' is competent to drive transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7,500 kg or a motor car or tractor or road-roller, the unladen weight of which does not exceed 7,500 kg.

The civil miscellaneous appeal is dismissed.

<u>MACMA.No.1733 of 2012</u>:

5. This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the XXI Additional Chief Judge, Hyderabad in MVOP.No.747 of 2008 dated 13.08.2010 on the ground of inadequacy of the compensation and that the earnings taken by the Court below are not appropriate.

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[1] 2017 ACJ 2011

6. The deceased is stated to be a milk vendor and a cable operator. The earnings are stated to be Rs.12,000/- per month. In order to prove the said income, the claimants examined P.W.3, under whom the deceased was working as cable operator. P.W.3 stated that he was paying Rs.5,000/- to the deceased.

7. The counsel for the respondent-insurance company contends that in the cross-examination, P.W.3 stated that he was himself earning Rs.10,000/- per month and in the light of the said evidence, his evidence that he was paying Rs.5,000/- to the deceased cannot be believed. On the other hand, the counsel for the claimants contends that the deceased was only a part time worker under P.W.3 as he was also doing milk vending business.

8. There is absolutely no evidence except the self-serving evidence of the claimants with regard to milk vending business. Hence, in the light of the evidence, the approach of the Court below in taking the income at Rs.4,500/- per month cannot be found fault with. However, the plea of the counsel for the claimants with respect to future hike in income can be considered as per the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] and that the deceased being 24 years, 40% has to be the future hike in income. Following the said principle, the income, after calculation, would come to Rs.4,500/- x (Rs.4,500/- x 40% = Rs.1,800) = Rs.6,300/- per month. The claimants being four in number, as per the decision of the Supreme Court in SARLA VERMA v. DELHI

TRANSPORT CORPORATION[2] the deduction towards personal expenditure should be 1/4th, then the loss of monthly income would come to Rs.6,300/- - (Rs.6,300/- x ¼ = Rs.1,575/-) = Rs.4,725/- and annual income would come to Rs.4,725/- x 12 = Rs.56,700/-. The multiplier adopted by the Court below as '18' is not disputed. Hence, the loss of future income to the claimants would come to Rs.56,700/- x 18 = Rs.10,20,600/-. Apart form the above, following the decision in PRANAY SETHI's case (supra), Rs.40,000/- is awarded to the first claimant under the head loss of consortium; Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- towards funeral expenses. In all, the claimants are entitled to total compensation of Rs.10,20,600/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.10,90,000/- and the same is substituted for Rs.6,78,000/- awarded by the Court below. The compensation awarded to the claimants is apportioned as follows:

1. Claimant No.1/wife : Rs.7,90,000/-
2. Claimant No.2/Mother : Rs.2,00,000/-
3. Claimant No.3/Father : Rs.75,000/-
4. Claimant No.4/Brother : Rs.25,000/-

9. Hence, the claimants are entitled to total compensation of Rs.10,90,000/- with proportionate costs. The award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

The civil miscellaneous appeal is allowed in part.

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[2] (2009) 6 SCC 121

In the result, MACMA.No.897 of 2011 is dismissed and MACMA.No.1733 of 2012 is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed.

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T. RAJANI, J

December 8, 2017
DSK