

SMT JUSTICE T. RAJANI

MACMA.Nos.3860 of 2011 and 2953 of 2012

COMMON JUDGMENT:

MACMA.No.3869 of 2011:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the Chief Judge, City Civil Court, Hyderabad in MVOP.No.2359 of 2005 dated 08.09.2011, on the ground that the compensation awarded by the Court below is not adequate.

2. Heard both sides.

3. The counsel for the appellant stresses only upon two aspects and does not raise any objection for the income that was taken by the Court below as Rs.6,500/- per month. His contention is that instead of deducting 1/4th by considering the number of claimants as four in number, the Court below deducted 1/3rd towards the personal expenditure of the deceased and the same cannot be sustained, as the Supreme Court had laid down as such in its decision in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹. His other contention is that the compensation awarded under the head loss of consortium, loss of estate and funeral expenses are not as per the ratio laid down by the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017) wherein Rs.40,000/- was directed to awarded under the

¹ (2009) 6 SCC 121

head loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

4. Taking the above submissions into consideration and accepting the same, the compensation shall be computed. After deducting $1/4^{\text{th}}$ from Rs.6,500/-, the loss of monthly income would come to Rs.4,875/- and annual income would come to Rs.4,875/- x 12 = Rs.58,500/-. The multiplier '13' adopted by the Court below is relevant for the age of the deceased, hence, the loss of future income to the claimants would come to Rs.58,500/- x 13 = Rs.7,60,500/-. Apart from the above, Rs.40,000/- is awarded towards loss of consortium to the first claimant, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expense. The total compensation comes to Rs.7,60,500/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.8,30,500/-.

5. Hence, in all, the award of the Court below stands enhanced from Rs.6,96,000/- to Rs.8,30,500/- 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 enhanced 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.

MACMA.No.2953 of 2012:

6. This appeal is preferred by the appellants, who are respondents 1 and 2 before the Court below, assailing the judgment of the Chief

Judge, City Civil Court, Hyderabad in MVOP.No.2359 of 2005 dated 08.09.2011 on the ground that the Court below did not take into consideration the contributory negligence on the part of the driver of the lorry.

8. The counsel for the appellants seeks the Court to believe the evidence of R.W.1, who is the driver of the APSRTC bus, who stated that the lorry was parked on the road without any parking lights and that in his endeavour to avert the accident to two persons, who suddenly came on the road, he had to dash against the rear portion of the lorry.

9. But the Court below did not believe the evidence of R.W.1, by appreciating the whole of his evidence, in which an incomprehensive fact was stated that the deceased passenger, who sat in the conductor's seat was in confusion and jumped from the vehicle. The Court took up discussion under issue No.1 at para (g) of the judgment. The said reasoning cannot be said to be erroneous, in the light of the appreciation made of the available facts. The evidence that has come up was that the deceased was sitting in the first seat and the Court felt that jumping out of the bus from the said seat was not possible.

10. Now the counsel for respondent No.6 – insurance company contends that R.W.1 has clearly stated that he observed the lorry and in such situation, it has to be inferred that he was negligent and that he was going at a high speed, so that he could not stop the bus at appropriate time. The said argument cannot be brushed aside. The

evidence of R.W.1 is clear that he observed the lorry and in such circumstance, if he was going slowly, as stated by him, he could have stopped the bus. Moreover, the accident occurred at 4 AM when it cannot be assumed that there would be no light at all. Hence, apart from the charge sheet being filed against the driver of the RTC bus, the above facts would lead to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus.

With the above observations, the civil miscellaneous appeal is dismissed.

In the result, MACMA.No.3860 of 2011 is allowed in part with proportionate costs and MACMA.No.2953 of 2012 is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed.

December 5, 2017
DSK

T. RAJANI, J

