SMT JUSTICE T. RAJANI

MACMA.No.2087 of 2008

JUDGMENT:

This appeal is preferred by the appellants-insurance company, who are respondents 2 and 3 before the Court below, assailing the judgment of the II Additional District Judge, Warangal in OP.No.410 of 2006 dated 10.08.2007, on the grounds that the Court below ought to have seen that the driver of the auto was not possessing valid driving license on the date of the accident and that there was no fitness certificate for the auto, as it expired by the date of accident; the Court below erred in fixing the monthly salary of the deceased as Rs.4,000/- per month, while the evidence of P.W.3, who is the employer of the deceased, is that he was earning Rs.3,000/- per month; the Court below erred in not properly quantifying the amount of 1/3 of personal expenses and deducting the same from the total income; the Court below ought to have seen that after deduction of 1/3rd amount, the balance would come to Rs.32,000/- but not Rs.36,000/- and the Court below ought to have seen that the multiplier applied is not appropriate to the age of 55 years.

2. Heard both sides.

3. The counsel for the appellants, at the hearing, would mainly stress upon the absence of fitness certificate to the vehicle. He contends that no liability can be fixed on the appellants, in the absence of fitness certificate to the crime vehicle. In support of his contention, he relies upon a decision of the Supreme Court in

NATIONAL INSURANCE CO. LTD. v. CHALLA UPENDRA RAO[1] wherein it was held that a person, without a permit to ply the vehicle, cannot be placed on a better position vis-à-vis one who has a permit but has violated any condition thereof. The High Court was of the view that since there was no permit the question of violation of any condition in the policy, does not arise. The said view was held to be fallacious by the Supreme Court and it was held that a person without a permit to ply a vehicle cannot be placed in a better position vis-à-vis one who has a permit, but has violated any condition thereof and that plying of vehicle without permit is an infraction. It was further observed that in terms of Section 149(2) defence is available to the insurer on that aspect.

4. The counsel for the claimants also relied on the aforesaid decision in support of his contention that fitness certificate is necessary only in case the vehicle age is more than 10 years and it is not application to this case, as the age of the vehicle is less than 10 years.

5. But, unfortunately, the decision does not anywhere spell that the fitness certificate is necessary only in case of vehicle, which is more than 10 years old. Section 66 of the Motor Vehicles Act deals with the necessity for permit and the aforesaid explanation is not carved out under the said provision.

6. A short order of the Supreme Court in SLP(C).No.31406 of2017 dated 22.11.2017 is also relied upon by the counsel for the appellants,

---

[1] (2004) 8 SCC 517

wherein the Supreme Court declined to approve the view taken in *AUGUSTINE, V.M. v. AYYAPPANKUTTY* [2015 (1) TN MAC 740 (FB) (KER.)], which took a view contrary to the view taken by the Supreme Court in *NATIONAL INSURANCE CO. LTD. v. CHALA BHARATHAMMA* [(2004) 8 SCC 517], cited supra, *NEW INDIA ASSURANCE CO. LTD. v. ASHA RANI* [(2003) 2 SCC 223] and *NATIONAL INSURANCE CO. LTD. v. NICOLLETA ROHTAGI* [(2002) 7 SCC 456].

7. In this case, the evidence that the vehicle was plied without permit stands uncontraverted. It came through R.Ws.1 and 2, who are the Deputy Manager of the appellant company and Senior Assistant in the office of RTA, Warangal.

8. But, however, the decision in CHALLA UPENDRA RAO's case (1 supra), relied on by the counsel for the appellants, can be taken help of by this Court to direct the appellants to satisfy the award, though in law, it has no liability and to recover the same from the owner, as that was the direction given by the Supreme Court in the said decision.

9. As regards excessiveness of the compensation, this Court is not inclined to interfere with the judgment of the Court below, as the Court below by considering that the deceased was doing part time job, apart from working in a photo studio, where he was drawing Rs.3,000/- per month, took the salary as Rs.4,000/- per month. But now the law that is settled is that even a vegetable vendor would be able to earn to Rs.6,500/- per month (see *SYED SADIQ v.*

DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.) Hence, if the income is taken to be as such, the same would take care of the error of deduction of 1/3rd, which was made by the Court below, instead of ½ towards personal expenditure of the deceased. The Court below also did not take future prospects of the deceased into consideration, as is the dictum 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]. However, the Court below was erroneous in arriving at the figure, after deduction of 1/3rd towards personal expenditure of the deceased, which is, in fact, Rs.32,000/-. But the Court below arrived at Rs.36,000/-. This Court is not inclined to interfere with the said award in spite of the said fallacy, as the multiplier adopted by the Court below is 11, which is appropriate to the age of the mother of the deceased, but the multiplier that has to be adopted, as per the present position of law, is the one relevant to the age of the deceased. The other amounts awarded also are not adequate. Hence, this Court is not inclined to interfere with the judgment of the Court below so far as the compensation amount is concerned.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

December 21, 2017
DSK