SMT. JUSTICE T.RAJANI

MACMA No.5467 of 2008
And
MACMA No.2896 of 2017

COMMON JUDGMENT:

MACMA. No.5467 of 2008 is preferred by the appellant-United India Insurance Company Limited, who is the 2nd respondent before the Court below, assailing the award of the XVIII Additional Chief Judge, Hyderabad, passed in O.P. No.1684 of 2006 on 22.08.2008, on the grounds that the Court below failed to attribute any negligence to the vehicle on which the deceased was traveling, in spite of the fact that it is a head on collision and in spite of the fact that three persons were traveling on the motorcycle, which would itself prove negligence; the Court below ought to have apportioned the liability in the ratio of 50% between two vehicles; the multiplier adopted by the Court below is also not appropriate.

MACMA. No.2896 of 2017 is preferred by the appellants, who are the claimants before the Court below, assailing the award of the XVIII Additional Chief Judge, Hyderabad, passed in O.P. No.1684 of 2006 on 22.08.2008 on the grounds that the Court below took the earnings of the deceased on the lower side; deduction towards personal expenses is also not proper; and the age of the deceased was also not taken correctly.

Since both the appeals arose out of the same O.P., these appeals are disposed of by this common judgment.

Heard the learned counsel on either side and perused the material on record.

The learned standing counsel appearing for the Insurance Company contends that it is a case of head on collision and therefore, there need not be any demur to attribute 50% negligence to the rider of the motorcycle on which the deceased was traveling. The Court below took up the discussion on the said aspect and observed that the evidence of the eye witnesses, P.Ws.2 and 3, is clear that the motorcycle was proceeding slowly on the left side of the road and the lorry came from wrong side and dashed the motorcycle. Every accident, occurring in opposite directions, cannot be termed as head on collision. It is only when the two vehicles come exactly in the same line from opposite direction, the collision can be termed as head on collision. But this is not such a case. Hence, the contention of the learned standing counsel cannot be accepted. Triple riding by itself does not constitute an aspect of negligence if it is proved that even while triple riding, the rider was going slowly and cautiously and that it did not affect his efficiency of driving.

With regard to adoption of multiplier, the learned standing counsel contends that the Court below has wrongly taken the multiplier as 13, while age of the deceased was 49 years, for which, as per **SARALA VARMA VS. DELHI TRANSPORT CORPORATION**[1] it should be reduced.

On the other hand, the learned counsel appearing for the claimants takes the attention of this Court to Ex.A-5, PME report, wherein the age of the deceased was mentioned as 48 years. The multiplier for both the ages is the same and is 13 as per Sarla verma's (one supra) case.

The learned counsel for the claimants placed reliance in the case of **NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS**[2] and contends that 25% should be taken as the future hike of the earnings of the deceased who is self employed. Then the earnings of the deceased, which were taken as Rs.4,000/- would be Rs.5,000/-. He also contends that the claimants being 4 in number, deduction towards personal expenditure has to be 1/4th as per Sarala Varma's case

[1] (2009) 6 SCC 121
[2] MANU/SC/1366/2017

(one supra). After deduction of 1/4th from Rs.5,000/-, loss of monthly income comes to Rs.3,750/- and loss of annual income comes to Rs.45,000/-. The same when multiplied with 13 (45000 x 13) comes to Rs.5,85,000/-.

The learned counsel for the claimants also takes the help of the ruling rendered in the case of Pranay Sethi (two supra) to contend that the amounts awarded under the head of the funeral expenses and consortium have to be enhanced. The Court below awarded Rs.2,000/- towards funeral expenses which as per the case two supra have to be enhanced to Rs.15,000/-, so also, the loss of consortium should be enhanced by another Rs.25,000/-, as the Court below had already awarded Rs.15,000/- towards consortium. In all towards consortium Rs.40,000/- is awarded. It is pertinent to note here that the Court below had already awarded Rs.15,000/- towards loss of estate, which need not be interfered with. After enhancing the amounts as such, total award comes to Rs.6,55,000/-. The claimants are entitled to in the same proportion as per the apportionment made by the Court below.

As regard the claim amount being less then the awarded amount, the learned counsel for the claimants relied on the ruling rendered in **ADAM INDUR MUTTEMMA AND OTHERS Vs. RATHOD REDDIA AND OTHERS**[3], wherein it was held that the compensation has to be just and it can exceed the claim. Following the said ruling, award amount is enhanced to Rs.6,55,000/-. The claimants shall pay the differential Court fee on the differential amount.

This award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

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[3] 2015 ACJ 2414

In the result, MACMA. No.5467 of 2008, preferred by the Insurance Company, is dismissed but under the circumstances there shall be no order as to costs.

MACMA. No.2896 of 2017, preferred by the claimants, is allowed with proportionate costs. Miscellaneous petitions, if any, pending consideration, shall stand closed in consequence.

JUSTICE T.RAJANI

Date: 09.11.2017
LSK