SMT. JUSTICE T.RAJANI

MACMA No.5397 of 2008
And
MACMA No.2895 of 2017

COMMON JUDGMENT:

MACMA. No.5397 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.1680 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.2895 of 2017 is preferred by the appellants, who are the claimant Nos.5 to 7 before the Court below, assailing the award of the XVIII Additional Chief Judge, Hyderabad, passed in O.P. No.1680 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 17 while age of the deceased is 35 years, for which as per **SARALA VARMA VS. DELHI TRANSPORT CORPORATION**[1] it should be 16.

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 30 years. This Court accedes to the contention of the learned counsel for the claimants, as, the age mentioned in PME report stands on a better footing of credibility. If the age of the deceased is taken as 30 years multiplier taken as 17 stands to be appropriate.

The learned counsel for the claimants placed reliance on the case of **NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND OTHERS**[2] and contends that 40% should be taken as the future hike salary of the earnings of the deceased in the case of self employed.

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

Then the earnings of the deceased, which was taken as Rs.3,000/- would be Rs.4,200/-. He also contends that the claimants being 7 in number *(this appeal i.e. MACMA. No.2895 of 2017 is preferred only by three claimants and other claimants are shown as proposed respondents may be to mean as proforma respondents)* deduction towards personal expenditure has to be $1/5^{th}$ as per Sarala Varma case (one supra). The proforma respondents would also be entitled for the enhanced compensation as they are also dependants and as the Court below awarded compensation to them also. After deduction of $1/5^{th}$ from Rs.4,200/-, loss of monthly income comes to Rs.3,360/- and the loss of annual income comes to Rs.40,320/-. The same when multiplied with 17 (40320 x 17) comes to Rs.6,85,440/-.

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, has to be enhanced to Rs.15,000/-, so also, the loss of consortium should be enhanced by another Rs.10,000/-. The Court below had already awarded Rs.30,000/- towards consortium, which is enhanced to Rs.40,000/-, being bound by the case two supra . 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.7,55,440/-, which can be rounded off to Rs.7,56,000/-. The claimants and the proforma respondents are entitled to the compensation proportionate to 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 is held that compensation has to be just and can exceed the claim. Following the said ruling, award amount is enhanced to Rs.7,56,000/-. The claimants shall pay the differential Court fee on the differntial 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.

In the result, MACMA. No.5397 of 2008, preferred by the Insurance Company, is dismissed but under the circumstances there shall be no order as to costs.

MACMA. No.2895 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

[3] 2015 ACJ 2414