HON'BLE SRI JUSTICE SURESH KUMAR KAIT
And
SMT JUSTICE T. RAJANI

MACMA No.32 of 2016

JUDGMENT: (ORAL)
(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant/Insurance Company has challenged the award dated 30-07-2015 passed in MV.O.P.No.355 of 2012, whereby the learned Tribunal awarded compensation to a tune of Rs.47,74,200/- with interest @7.5% per annum from the date ofpetition till the date of deposit.

Learned counsel for the appellant has drawn the attention of this Court at para No.12 of the impugned judgment recorded as under:

> " That being the contentions, a glance at the manner of accident would indicate that the Scooterist was also having ample opportunity to observe the speeding car and he should have slowed while taking 'U' turn at the crossroads, however, such case of self safety was not taken by the Scooterist. At the same time, the speeding car's driver was also having the duty of great care in slowing down the vehicle when he had seen the Scooterist crossing at the crossroads. In normal circumstances, the drivers near the crossroads must be careful enough to see the vehicle crossing near 'X' roads, more particularly, when there was no traffic controller. In the present case, the accident occurred in the midnight and the car driver should have taken the greatest possible safety measure in

> passing through cross-roads which is not done in the present case. Therefore, I am the view that the accident was resulted of negligence on the part of the driver of the car and also driver of the scooter. However, such negligence was highest on the part of the car driver."

Learned counsel submits that since the Tribunal was of the opinion that the driver of the car and also the driver of the Scooter were negligent, therefore, liability could not have been fastened upon the appellant herein. To strengthen his argument, counsel for the appellant has relied on case of **T.O.Anthony v. Karvarnan**[1], whereby the Supreme Court held as under:

> "The Tribunal assumed that the extent of negligence of the appellant and the first respondent is 50:50 because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account

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[1] (2008) 3 Supreme Court Cases 748

> of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned."

As stated by the Hon'ble Supreme Court in the above cited judgment relied on by learned counsel for the appellant, it would not be proper for the Court to determine the accident on composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasors should be left in case he so desires to sue other joint tortfeasors in independent proceedings after passing of the decree or award.

The second ground argued by the learned counsel for the appellant is that the actual salary of the deceased was Rs.34,000/-. However, learned Tribunal has assessed at the rate of Rs.35,000/- per month. Thus award to be modified. The evidence of the claimants shows that deceased was employed as Merchandiser-cum-Purchase Manager for the South in M/s. Forever Precious Jewellery and Diamonds Limited, Hyderabad which is having headquarters at Ahemdabad. He was earning Rs.50,000/-per month. In order to prove the earnings of deceased, the claimants have relied upon the oral evidence of PW.3 namely Mr.Goutam Patel, HR Manager of Forever Precious Jewellery and Diamonds Limited at Ahmedabad. In addition to oral evidence, the claimants have relied upon Ex.A.9 appointment letter dated 24-06-2011 and Ex.A.10 is the salary slip for the month of July, 2011 to December, 2011. Ex.A.11 is the extract of statement of account of deceased in HDFC Bank. The oral evidence of PW.3 and Ex.A.9 appointment letter shows that deceased was joined with the salary of Rs.48,000/-. Ex.A.10 is salary slip for the month of July, 2011 to December, 2011 shows actual earning in the range of Rs.33,420/- to Rs.36840/-respectively. Thus accordingly, learned Tribunal has rightly assessed the salary of deceased at the rate of Rs.35,500/- per month. In view of the same, we find no infirmity or perversity in the award on this issue.

In view of the same, we found no ground in the present appeal.

The appeal is accordingly dismissed. However, liberty is granted to the appellant to sue the other tortfeasors if it deem fit. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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JUSTICE SURESH KUMAR KAIT

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JUSTICE T. RAJANI

25-04-2018
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