THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.712 and 2633 of 2013

COMMON JUDGMENT:

MACMA.No.712 of 2013 is preferred by the owner of the crime vehicle while MACMA.No.2633 of 2013 is preferred by the claimants. The appellants in both the appeals assailed the judgment dated 30.12.2009 passed in MVOP.No.364 of 2007 by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati, mainly on the ground that the approach of the Court below in exonerating the Insurance Company as against the established principles of law is erroneous. The claimant also assails the judgment on the ground of inadequacy of compensation.

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

The Court below by considering that the deceased was traveling as passenger in a private car, exonerated the Insurance Company, by considering that the Ex.B1, policy, does not cover the risk of passenger traveling as a fare paid passenger. The counsel for the appellant now assails the said finding by relying on the terms of the policy itself, wherein the policy is mentioned to be a motor package policy. A perusal of the insurance policy, which is marked as Ex.B1, shows the same. The counsel also takes the help of the ruling reported in ***NATIONAL INSURANCE COMPANY LIMITED Vs. BALAKRISHNAN AND ANOTHER***[1] wherein the Apex Court at paragraph 24 observed as follows:

> "24. It is extremely important to note here that till 31-12-2006 the Tariff Advosory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of

[1] (2013) 1 Supreme Court Cases 731

> the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive package policy" irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16-11-2009 and 3-12-2009, that have been reproduced hereinabove, were issued."

The counsel for the respondent also does not deny that the policy is a package policy. Hence, in view of the above ruling, the judgment of the Court below, exonerating the insurance company cannot be sustained. In that view of the matter, the same is set aside and the respondents 1 and 2, owner and insurer, who are appellant and the 1st respondent in MACMA No.712 of 2013, are jointly and severally held liable.

With regard to the adequacy of the award, the learned counsel for the appellants/claimants in MACMA.No.2633 of 2013 assails the award only on a limited ground, that the compensation awarded under conventional heads is not adequate and he relies on the judgment of ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[2] and seeks to enhance the award by another Rs.50,000/-, as the Court below awarded consortium only for Rs.10,000/- and Rs,5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The Apex Court in the above ruling held that Rs.40,000/- should be awarded towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses should be awarded. Hence, the claimants are entitled to the said enhancement. In all, another Rs.50,000/- is awarded, with proportionate costs.

The 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, both the appeals are partly allowed. Consequently, miscellaneous applications, if any, shall stand closed.

JUSTICE T. RAJANI

Date: 20.07.2018
LSK

[2] MANU/SC/1366/2017