THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA MP No.4734 of 2017 in MACMA No.1528 of 2006
and
M.A.C.M.A. Nos.2482 of 2005 and 1528 of 2006

COMMON JUDGMENT:

MACMA No.2482 of 2005 is filed by the Insurance Company whereas MACMA No.1528 of 2006 is filed by the claimants challenging the award dated 25.08.2004 passed in O.P.No.137 of 2001 by the III Additional Chief Judge, City Civil Court, Hyderabad (for short, the Tribunal), whereby and whereunder the Tribunal granted compensation of Rs.74,000/- with subsequent interest @ 6% per annum payable by the respondents in the O.P., as against the claim of Rs.2,00,000/- on account of death of the deceased in the motor vehicle accident occurred on 11.09.2000.

2. Brief facts of the case are that on 11.09.2000 at about 6.00 a.m., while the deceased was proceeding towards Priya Talkies in his auto bearing No.AP 10T 6596 to bring milk packets and when he reached near Riaan Hotel at Mallepalli, a scooterist suddenly came across and in order to avert the accident, the deceased suddenly applied brake, due to which, the auto turned turtle and the deceased sustained serious injuries and fractures. Immediately, he was shifted to Osmania General Hospital where he was treated as in-patient. Later, he was shifted to NIMS hospital for better treatment. While undergoing treatment, he succumbed to injuries on 22.09.2000 in the hospital. A case in crime No.252/2000 was registered at Humayun Police Station for the offence punishable under Section 304A IPC in respect of the said accident. Alleging that the deceased used to earn Rs.3,000/- per month, the legal heirs of the deceased filed claim petition against

R.1-owner and R.2-insurer of the auto, for awarding compensation of Rs.2,00,000/-.

3. Before the Tribunal, the owner of the auto was set *ex parte* and the 2nd respondent-Insurance Company filed counter denying liability, age and earnings of the deceased. It also stated that since the deceased was not a third party to the crime vehicle, insurer is not liable to pay compensation. The deceased was not having valid and effective driving license to drive the crime vehicle. Since there is breach of terms and conditions of the policy, the insurance company is not liable to pay compensation and that the compensation claimed is excessive.

4. Based on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred out of the use of the auto bearing No.AP 10T 6596 of respondent No.1"
2) Whether the petitioners are entitled to compensation? If so, to what amount?
3) To what relief?

5. In order to prove their case, the claimants got examined PWs 1 and 2 and marked Exs.A.1 to A.5. On behalf of the Insurance Company, no oral evidence was adduced, but Ex.B.1 was marked.

6. After appreciating the entire oral and documentary evidence available before it, the Tribunal awarded Rs.25,000/- towards pain and suffering, Rs.33,000/- towards medical

expenses, Rs.5,000/- towards traveling expenses and extra nourishment, Rs.1,000/- towards loss of income and Rs.10,000/- towards loss of expectation of life, thus, in all, the Tribunal granted Rs.74,000/- towards compensation payable by both the respondents along with costs and interest @ 6% per annum. Aggrieved by the same, the Insurance Company as well as the claimants are before this Court by way of separate appeals, as indicated above.

7. The contention of Insurance Company mainly is that the application filed by the claimants under Section 166 of the M.V.Act is not maintainable and since the accident was occurred due to rash and negligent driving of the deceased, as seen from Exs.A.1 and A.2, the Insurance Company is not liable to pay compensation.

8. Per contra, learned counsel for the claimants submits that during the pendency of the appeals, the claimants filed MACMA MP No.4734 of 2017 seeking permission to amend the provision of law of the claim petition from Section 166 of the Motor Vehicles Act to Section 163-A of the Motor Vehicles Act.

9. Having regard to the facts and circumstances of the case, since the Motor Vehicles Act being a beneficial legislation and in view of the ratio laid down by the Hon'ble Apex Court in ***Shivaji vs. Divisional Manager, United India Insurance Co. Ltd.***[1], this Court feels that it would be just and proper to allow the application by converting the claim from Section 166 of the Motor Vehicles Act to Section 163-A of the Motor Vehicles Act.

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[1] AIR 2018 SC 3705

10. As regards quantum of compensation, it is evident from the record that the vehicle, which was driven by the deceased, is an auto and in order to save a scooterist and avert the accident, the deceased applied sudden brake, due to which the auto turned turtle and the driver of the auto sustained severe injuries and factures and died while undergoing treatment on 22.09.2000. The Tribunal without computing the compensation based on the income, age and avocation of the deceased, simply granted Rs.74,000/-, which is unjust and needs to be interfered with. It is the case of claimants that the deceased was earning Rs.3,000/- per month by running auto. As per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[2], the deceased, being a self employed person, is entitled for 40% of the income towards future prospects. Thus, the income of the deceased comes to Rs.4,200/- per month (Rs.3,000/- + 40% thereof) and his annual income would be Rs.50,400/-. Further, as the dependants of the deceased are 6 in number, as per the decision of the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***[3], 1/4th has to be deducted from the income of the deceased towards personal expenses. In such an event, the contribution of the deceased to his family comes to Rs.37,800/- per annum. Further, the multiplier applicable in the present case is '16' as the deceased was aged 35 years at the time of accident. Thus, the loss of dependency comes to Rs.6,04,800/-. That apart, the claimants are entitled for Rs.70,000/- under

[2] 2017 Law Suit (SC) 1093
[3] 2009 (6) SCC 121

conventional heads in view of the ratio laid down by the Apex Court in ***Pranay Sethi (2 supra)***. Further, the amounts awarded by the Tribunal of Rs.74,000/- (i.e. Rs.25,000/- towards pain and suffering, Rs.33,000/- towards medical expenses, Rs.5,000/- towards traveling expenses and extra nourishment, Rs.1,000/- towards loss of income and Rs.10,000/- towards loss of expectation of life) require no interference by this Court and the same are hereby confirmed. Thus, in all, the claimants are entitled for Rs.7,48,800/- .

11. Though the compensation claimed by the claimants before the Tribunal was only Rs.2,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***[4], there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimants. However, the appellant-claimant shall pay the difference of Court Fee for the excess amount of compensation granted i.e.Rs.5,48,800/-.

12. Accordingly, the compensation awarded by the Tribunal of Rs.74,000/- is enhanced to Rs.7,48,800/- along with interest @ 6% per annum as awarded by the Tribunal. The respondents shall deposit the remaining compensation along with proportionate interest and costs to the credit of the O.P. before the Tribunal, within a period of four weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw

[4] (2003) 2 SCC 274

the entire amount, in equal proportion, subject to payment of deficit Court fee.

13. In the result, the appeal filed by the claimants in MACMA No.1528 of 2006 and MACMA MP No.4734 of 2017 filed therein are allowed and consequently the appeal filed by the Insurance Company in MACMA No.2482 of 2005 is dismissed.

Miscellaneous petitions pending in these appeals, if any, shall stand closed. No order as to costs.

T. AMARNATH GOUD, J

11.09.2019
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