

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.2708 OF 2005

AND

M.A.C.M.A.No.1848 OF 2006

COMMON JUDGMENT:

MACMA No.2708 of 2005 is filed by the Insurance company and MACMA No.1848 of 2006 is filed by the owner of the crime vehicle against the award, dated 06.05.2005 passed in O.P.No.786 of 2004 by the Additional Metropolitan Sessions Judge for the trial of JHCBBC, - cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. Learned counsel for the insurance company contended that the claimants failed to prove the occupation and income of the deceased as in the occupation column, it was mentioned that the deceased was labourer, in Ex.A.4-inquest panchanama, the deceased occupation mentioned as housewife and that PW.1, who is the husband of the deceased deposed that the deceased was tailor and that in the absence of proof of any evidence, the tribunal erred in taking the age of the deceased as 40 and adopting multiplier '15', that the compensation granted by the tribunal is highly excessive, that the deceased was having two children and the elder daughter was got married, as such she cannot be considered as dependant on the income of the deceased and therefore, prayed to allow the appeal filed by the insurance company by setting aside the order of the tribunal. Learned counsel for the insurance company also contended that the pillion rider is not entitled for compensation irrespective of any injuries.

4. Learned counsel for the owner of the vehicle contended that the compensation with costs and subsequent interest @ 6% granted by the tribunal is on higher side and that the claimants failed to prove the occupation and income of the deceased and that the husband of the deceased was earning person and he got married one Padma within six months from the date the death of the deceased as such he cannot be considered as dependant on the income of the deceased and that the owner of the vehicle was not driving the vehicle in a rash and negligent manner and that the accident is act of God and therefore, prayed to dismiss O.P. by allowing MACMA No.1848 of 2006

5. It is settled principles of law by the Apex Court and also by this Court in number of cases held that the claim made against any injury or death caused to the pillion rider of a vehicle, which is insured, the claimants are entitled for just compensation. In so far as proof of income is concerned, where there is no proof of income as per the ratio in **Ramachandrappa v Royal Sundaram Alliance Insurance Co. Ltd.**¹, Rs.4,500/- can be taken as monthly income. This Court is of the opinion that since this appeal pertains to the year 2004, considering Rs.3,000/- per month by the tribunal is just and proper and more so, basing on Ex.A.6-post-mortem report, the tribunal has considered the age of the deceased as '40' years, which is appears to be reasonable.

6. In so far as appeal of the owner of the vehicle is concerned i.e. MACMA No. 1848 of 2006 the deceased was travelling as pillion rider on the crime vehicle and the same is insured with the insurance company, which is valid as on the date of accident. The tribunal fastened the liability on the insurance company and on the owner of the vehicle, jointly and severally giving weightage to the evidence of PW.1. As per

¹ (2011) 13 SCC 236

Ex.A.4-interest and Ex.A.5-final report, there is no discussion about the presence of PW.2 nor did he witness the incident. Therefore, the evidence of PW.2 is doubted. PW.2 deposed that he was not present at the scene of offence. It is reasonably presumed that if he is present being relative that he would not keep away from himself at the time of accident, he would have accompanied the deceased and the owner of the vehicle to the hospital. His name (PW2) would have appeared in the inquest report and also as witness in the final report. But the link is missing. In view of the above, this Court declines to give credence to the evidence of PW.2 and feels that fastening liability on the owner of the vehicle is unjust and accordingly, owner of the crime vehicle is exonerated and insurance company is made liable to pay the compensation.

7. In view of the above, M.A.C.M.A.No.2708 OF 2005 filed by the Insurance Company is dismissed and M.A.C.M.A.No.1848 of 2006 filed by the owner of the vehicle is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

T.AMARNATH GOUD,J

DATE 29.08.2019
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