THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. Nos.172 of 2005 and 1800 of 2006

COMMON JUDGMENT:

Since these appeals arose out of the same accident they are being disposed of by this common judgment.

MACMA.No.172 of 2005 is preferred by the M/s.Oriental Insurance Company Limited and MACMA. No.1800 of 2006 is preferred by the claimants against the order dated 11.08.2004 passed in O.P. No.1121 of 1998 by the Motor Accidents Claims Tribunal (District Judge) at Nizamabad.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the learned Tribunal in the original petition.

Brief facts of the case are that on 29.01.1997 the deceased, Kurma Dathu, was traveling towards Vijayawada from Hyderabad in a bus bearing No.AP25/T-3963 at about 4.00 hours, early in the morning, when the bus reached the outskirts of Kanchukacherla village on NH-9, the driver of the bus drove the bus in a rash and negligent manner, at that time, when a lorry was passing, without taking care and caution, the driver of the bus gave indication to the driver of the lorry to pass through, on account of which, the driver of the lorry came and dashed the right side portion of the bus, on account of which, the deceased, who was sitting on the right side of the bus, sustained head injury. Immediately he was shifted to Government Hospital, Vijayawada and he succumbed to the injuries on 30.01.1997 while undergoing treatment.

The claim of the claimants is that by the date of accident, the deceased was hale and healthy and he was aged about 32 years and was doing agriculture-cum-business and earning Rs.5,000/- per month and contributing the same for the maintenance of the family. Hence, the claimants filed the claim petition claiming compensation of Rs.5,00,000/- against the respondents, being the owner and insurer of the offending vehicle.

Before the learned Tribunal, the first respondent remained *ex parte*. The second respondent filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

After considering the oral evidence of P.W.1 and the documentary evidence of Exs.A-1 to A-5 and Ex.B-1, the learned Tribunal came to the conclusion that the accident took place due to the contributory negligence of bus belonging to the first respondent, which is insured with the second respondent, fastened the liability jointly and severally liable to pay 50% of the award with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realization and awarded total compensation of Rs.3,05,380/- and allowed the claim petition in part.

Assailing the said award the Insurance Company filed MACMA.No.172 of 2005 on the grounds that the learned Tribunal erred in appreciating Exs.A-1 and A-2, which clearly shows that the accident occurred only due to the rash and negligent driving of the driver of the lorry and not due to the negligence of the driver of the bus; that there is no proof of the deceased doing Kirana business, ought not to have taken the earnings of the deceased as Rs.150/- per day and it ought to have taken Rs.1,500/- per month as there is no proof of earnings.

Having not satisfied with the quantum of compensation awarded by the learned Tribunal, the claimants filed MACMA. No.1800 of 2006, seeking enhancement of the compensation awarded by the learned Tribunal.

The learned counsel for the claimants submitted that the learned Tribunal erroneously fixed the income of the deceased, which is very low. In support of his contention he placed reliance on the judgment of the Apex Court in ***RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED***[1]. He also submitted that the claimants are also entitled to addition of 40% on the income of the deceased towards future prospects

[1] (2011) 13 Supreme Court Cases 236

as per the ratio laid down by the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[2] since the deceased was below the age of 40 years. He also submitted that dependants being more than six in number, 1/5th has to be deducted towards personal expenses of the deceased and appropriate multiplier would be 17 as per the judgment of the Apex Court in ***SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER***[3]. He further placed reliance in the case of Apex Court in **MAGMA GENERAL INSURANCE CO. LTD. Vs. NANU RAM ALIAS CHUHRU RAM & OTHERS**[4] and submitted that the claimant Nos.2,3,4,5,7 and 8 are the minor children of the deceased, they are entitled to Rs.50,000/- each towards loss of love and affection and the claimant Nos.9 and 10 are the parents of the deceased are entitled to Rs.40,000/- each under the head of loss of filial consortium.

The learned standing counsel appearing for the Insurance Company while reiterating the grounds that were raised in their appeal submitted to dismiss the appeal preferred by the claimants.

Heard the learned counsel appearing for the claimants and the learned standing counsel appearing for the Insurance Company, and perused the material placed on record.

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[2] MANU/SC/1366/2017
[3] (2009) 6 Supreme Court Cases 121
[4] 2018 Law Suit (SC) 904

A perusal of the judgment of the Apex Court in **Ramachandrappa** (one supra) wherein for a person who works as a cooli, monthly income was taken as Rs.4,500/-. When a coolie is assumed to be earning Rs.4,500/- per month, there need not be any reason to say that the deceased, in this case, would not earn that much. Therefore, following the same, income of the deceased is fixed at Rs.4,500/- per month. Apart from the above, since the deceased was aged 30 years, as on the date of the accident, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Apex Court in **Prnay Sethi** (2nd supra). Therefore, monthly income of the deceased would comes to Rs.6,300/- (4500+1800(40%)), and after deduction of 1/5th, since the dependants are more than six in number, towards personal expenditure of the deceased, the monthly income of the deceased would comes to Rs.5040/- (6300-1260 (1/5th deduction)). Therefore, annual income of the deceased would comes to Rs.60,480/- (5040x12). Appropriate multiplier for the age of the deceased is '17'. Hence, the compensation under the head of "Loss of Income" comes to Rs.10,28,160/- (60480x17). The claimants are also entitled to Rs.70,000/- towards conventional charges as per **Pranay Sethi's** case (2nd supra). In the light of the **Nanu Ram Alias Chuhru Ram's** case (4th supra), a sum of Rs.3,00,000/- (50,000 each x 6 minor children of the deceased) is granted to the minor children of the deceased and a sum of Rs.80,000/- (40,000/- + 40,000/-) is granted to the parents, mother and father, of the deceased. Therefore, the total compensation would comes to Rs.14,78,160/- (10,28,160+70,000+3,00,000+80,000).

Since the categorical finding of the learned Tribunal is that the accident took place due to contributory negligence of bus and unknown lorry equally, respondents 1 and 2 are jointly and severally liable to pay 50% of the compensation i.e. Rs.7,39,080/-.

In the result, MACMA.No.172 of 2005, preferred by the Insurance Company, is dismissed.

MACMA.No.1800 of 2006 is allowed enhancing the compensation amount awarded by the learned Tribunal from Rs.3,05,380/- to Rs.7,39,080/-, payable by both the respondents jointly and severally.

The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of the award of the learned Tribunal till its realisation.

The respondents are directed to deposit the enhanced amount of compensation along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares, in the same proportion as held by the learned Tribunal, subject to payment of deficit Court fee. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 26.11.2019
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