THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.518 OF 2010
AND
CROSS OBJECTION (SR) No.23559 OF 2010

COMMON JUDGMENT:

MACMA.No.518 of 2010 is filed by the insurance company and Cross Objection (SR) No.23559 of 2010 is filed by the claimant challenging the Judgment and Decree dated 04.12.2009 in OP.No.1468 of 2007 on the file of the V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad (for short, the trial Court).

2. For the sake of convenience, the parties shall be referred to as they are arrayed before the trial Court.

3. The brief facts of the case are that on 19.01.2007 at about 12.30 pm., while the petitioner was driving lorry bearing No.AP16U 5763, coming towards Hyderabad from Bangalore, and when he reached Ittkyalapadu Village, another lorry bearing No.AP19TU 3748 came in a rash and negligent manner in the opposite direction and dashed against the lorry of the petitioner. In the said accident, the petitioner sustained grievous injuries all over the body and multiple fractures. Immediately, he was shifted to Kurnool Government Hospital, and from there, to Osmania General Hospital, Hyderabad. Thereafter, he was shifted to Deccan College of Medial Sciences, where he was treated as inpatient for 60 days and his right leg below kneed was amputated. The petitioner filed aforesaid OP claiming compensation of Rs.8,00,000/- against the

owner and insurer of lorry bearing No.AP19TU 3748, for the injuries sustained by him in the accident.

4. Before the trial Court, respondent No.1 remained *ex parte.* Respondent No.2 filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the trial Court came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP19TU 3748 and awarded total compensation of Rs.6,52,360/-, with interest @ 7.5% per annum, i.e., Rs.6,24,000/- towards disability and Rs.28,360/- towards medical expenses. Challenging the same, the insurance company filed MACMA.No.518 of 2010, while the claimant filed Cross Objection (SR) No.23559 of 2010, being dissatisfied with the quantum of compensation, seeking enhancement of compensation.

6. Sri V.Sambasiva Rao, learned Standing Counsel for the appellant/insurance company, submitted that though the claimant did not produce sufficient evidence to show that he was earning Rs.20,000/- per month as a driver, the trial Court erroneously fixed the income of the claimant at Rs.10,000/- per month, which is excessive. He further submitted that as per Section 3 of the Motor Vehicles Act, 1988, no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to

him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do. But, in the present case, the claimant was not possessing driver licence and hence, the appellant/insurance company is not responsible to pay the compensation. He further submitted that as there was no evidence to prove the disability of the petitioner, the trial Court ought not to have fixed his disability at 40% and sought to reduce the compensation.

7. Sri M.Govind Reddy, learned counsel for the claimant/Cross Objector, submitted that the trial court lost the sight of the fact that the claimant has produced sufficient evidence to show that he was earning Rs.20,000/- per month as a driver, and erroneously fixed the income of the claimant at Rs.10,000/- per month, which is, in fact, very low and meager. He further submitted that the age of the claimant was 38 years at the time of accident and the appropriate multiplier as per the decision of the Hon'ble Supreme Court in **Smt.Sarla Varma Vs. Delhi Transport Corporation**[1] is '15', but the trial Court wrongly took the multiplier '13'. He further submitted that the trial Court did not grant any amount under the head 'pain and suffering' and seeks to enhance the compensation.

8. Basing on the evidence of P.W.2, who is the owner of the lorry, who deposed that the claimant was personally driving his

[1] 2009 (6) SCC 121

lorry and was getting freight of Rs.45,000/- and was contributing Rs.20,000/- to his family, notionally fixed the income of the claimant at Rs.10,000/- per month. As the claimant did not file any evidence to show his monthly income, in the facts of the present case, I deem it appropriate to fix his income at Rs.8,000/- per month. Before the trial Court, though the insurance company raised the plea that the claimant had no valid driving licence, the counsel for the insurance company did not prove the same, and hence, I am not inclined to go into that issue in this appeal. As rightly urged by the learned counsel for the claimant, as per **Sarla Varma**'s case (supra), the appropriate multiplier for the age group of the deceased is '15'. Coming to the aspect of disability, the claimant filed Ex.A.5, handicapped certificate issued by the Medical Board, as per which, the right below the knee of the claimant was amputated and it shows the disability of the claimant at 40%. P.W.3, the doctor who treated the claimant, deposed that the claimant underwent operation twice and POP was applied to the right hand and right leg below knee was amputated and the claimant is disable to the extent of 40% to 50% and that because of amputation of right leg below the knee, the claimant cannot discharge his work. Therefore, the trial Court rightly fixed the disability of the claimant at 40%. Hence, the compensation under the head 'disability' comes to Rs.5,76,000/- (Rs.8,000/- X 12 X 15 X 40%). The trial Court did not grant any amount towards pain and sufferings. As the claimant is sustained multiple grievous injuries, I am inclined to grant a sum of Rs.40,000/- towards pain and sufferings and transportation. The amount of Rs.26,300/- granted by the trial Court towards medical expenses is confirmed. As the claimant was hospitalized for two months, an amount of Rs.16,000/- (Rs.8,000/- X 2 months) is granted towards loss of earnings. Therefore, the total compensation comes to Rs.6,58,300/- (Rs.5,76,000/- + Rs.26,300/- + Rs.40,000/- + Rs.16,000/-).

9. In the result, MACMA.No.518 of 2010 is dismissed and Cross Objection (SR) No.23559 of 2009 is partly allowed, enhancing the compensation amount awarded by the trial Court from Rs.6,52,360/- to Rs.6,58,300/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realisation. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 01.08.2019
TJMR