THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. Nos.861 of 2011 and 926 of 2016

COMMON JUDGMENT:

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

MACMA.No.861 of 2011 is preferred by the Reliance General Insurance Company Limited and MACMA. No.926 of 2016 is preferred by the claimants against the order dated 02.07.2010 passed in O.P. No.957 of 2008 by the Court of the VII Additional Metropolitan Sessions Judge cum XXI Additional Chief Judge, Hyderabad.

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 17.03.2006 at about 12.00 noon, while the deceased, Yadagiri, was going on his Hero Honda Motor Cycle bearing No.AP 10 AA 4266 on the extreme left side of the road from Hyderabad towards his village Tajpur on Hyderabad to Warangal road and when he reached NFC Nagar railway gate, Ghatkesar, the driver of the lorry bearing No.AP 16 TX 827 drove the vehicle with high speed, in rash and negligent manner and dashed to the motor cycle of the deceased from behind. Due to the sudden impact, the deceased fell down from his motor cycle, sustained fatal injuries and died on the spot.

The claim of the claimants is that by the date of accident, the deceased was hale and healthy and he was aged about 40 years and he was a folk artist and was registered with the Government Cultural Affairs Department and was performing shows and per show he was paid Rs.1,500/- thus he was earning Rs.20,000/- per month besides doing real-estate business through which, he was earning another amount of Rs.10,000/-. Hence, the claimants filed the claim petition claiming compensation of Rs.12,00,000/- against the respondents, being the owner, policy holder and insurer of the offending vehicle.

Before the learned Tribunal, the first and second respondents remained *ex parte*. The third respondent, Insurance Company, filed its counter denying the averments of the claim petition.

After considering the oral evidence of P.Ws.1 to 4 and the documentary evidence of Exs.A-1 to A-16 and Ex.B-1 and Exs.X1 to X4, the learned Tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the driver of lorry bearing No.AP 16 TX 827, which is insured with the third respondent, and directed the respondents 1 to 3 to pay an amount of Rs.7,86,000/- towards compensation with interest at the rate of 6% per annum from the date of petition till the date of deposit of amount into the Court.

Assailing the said award the Insurance Company filed MACMA.No.861 of 2011. The learned Standing Counsel appearing for the Insurance Company contended that the offending vehicle is bearing No.AP 28 V 1428, auto, but not the lorry bearing No.AP 16 TX 827, which is falsely implicated for the purpose of claiming compensation. He further contended that the deceased was not regularly earning person and in the absence of his proof of income fixing notional income by the learned Tribunal at Rs.6,000/- is unjust and the amount awarded is excessive. Since the insured vehicle is not involved in the accident and the same is not proved beyond all reasonable doubts fastening of liability on the Insurance Company and also awarding compensation is unjust and therefore, the award passed by the learned Tribunal has to be set aside by allowing the appeal preferred by the Insurance Company.

Having not satisfied with the quantum of compensation awarded by the learned Tribunal, the claimants preferred MACMA. No.926 of 2016, seeking enhancement of the compensation awarded by the learned Tribunal.

Heard the learned counsel on both side and perused material placed on record.

A perusal of the record, it is clear that P.W.4, Investigating Officer, who investigated the crime, categorically stated that on 17.03.2008 at about 1.00 pm., on the complaint of D.Anjaneyulu, a case was registered in Crime No.79 of 2008 under Section 304-A IPC against the driver of vehicle bearing No.AP 28 V 1428. On 20.03.2008 the eye witness P.Narsimha, P.W.2, stated about the involvement of tipper lorry bearing No.AP 16 TX 827. Thereafter, he examined the crime vehicle owner and recorded his statement and the owner of the crime vehicle admitted the involvement of his vehicle in the accident. He stated that he also secured the crime vehicle and the driver of the vehicle and the driver confessed the commission of offence. He verified with the RTA records and came to know that the vehicle bearing No.AP 28 V 1428 was an auto but not a lorry. He further stated that the complainant was not an eye witness to the accident and only a circumstantial witness and after satisfying himself, he filed the charge sheet against the driver of vehicle bearing No.AP 16 TX 827. Further, Ex.A2, certified copy of charge sheet, categorically reveals that the vehicle bearing No.AP 28 V 1428 is an auto and the crime vehicle is lorry bearing No.AP 16 TX 827.

P.W.2, *inter alia,* categorically stated that due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 TX 827 the said accident occurred. Evidence of P.W.3 is also corroborating the version of P.W.2. In the entire case, there is no discussion with regard to the auto in order to create any amount of doubt to deny the compensation and also not to fasten the liability on the Insurance Company. In the absence of such evidence and in view of the investigation made, this Court finds that the Issue No.1 answered by the learned Tribunal is just and proper.

With regard to quantum of compensation, as per the Ex.A-13, Income Certificate issued by the District Public Relations Officer, the deceased was a folk artist and performing shows and per show he was paid Rs.1,500/-. Though the claimants indicated that the deceased was earning Rs.20,000/- per month through performing shows and another Rs.10,000/- through real-estate business by the date of accident, this Court feels that it appears to be exaggerated. Since the claimants have not chosen to place any information with regard to the number of performances he was giving per month and nor they have examined any Government officials to prove the income of the deceased nor they have filed any bank statement showing the deposits received from the Government periodically, in the absence of above all, this Court feels that notional income has to be considered and accordingly the learned Tribunal has considered the same as Rs.6,000/- per month, which appears to be reasonable and accordingly, the same is confirmed.

Since the learned counsel for the claimants submitted that the claimants are also entitled to addition of 25% on the income of the deceased towards future prospects as per the ratio laid down by the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[1] the same is considered. He also submitted that dependants being six in number, 1/4th has to be deducted towards personal expenses of the deceased and appropriate multiplier would be 14 as per the judgment of the Apex Court in ***SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER***[2]***.*** He further placed reliance in the case of Apex Court in **MAGMA GENERAL INSURANCE CO. LTD. Vs. NANU RAM ALIAS CHUHRU RAM & OTHERS**[3] and submitted that the claimant Nos.3 and 4 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.5 and 6 are the parents of the deceased are entitled to Rs.40,000/- each under the head of loss of filial.

Taking into consideration the above all ratios laid down by the Apex Court, calculation of the award is made as under:

Rs.6,000/- pm., x 12 = 72,000/- + 18,000/- (additional of 25% towards future prospects) = 90,000/- (-) 22,500/- (1/4th deduction towards personal expenses of the deceased) = 67,500/- x 14 (multiplier) = 9,45,000/-. Thus, total loss of

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

dependency is Rs.9,45,000/-. In the light of **Nanu Ram Alias Chuhru Ram's case** (3rd supra) a sum of Rs.1,00,000/- (50000 each x 2 minor children of the deceased) is granted to the minor children of the deceased towards loss of love and affection and a sum of Rs.80,000/- (40000/- + 40000/-) is granted to the parents, mother and father, of the deceased towards loss of filial. Further, following the ratio laid down by the Apex Court in the case of **Pranay Sethi** (one supra) Rs.70,000/- is granted under the conventional heads i.e. Rs.15,000/- + 15,000/- + 40,000/-, towards loss of estate, funeral expenses and loss of consortium, respectively. In total the compensation is enhanced from 7,86,000/- to Rs.11,95,000/-.

The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of the appeal till its realization.

In the result, MACMA.No.861 of 2011, preferred by the Insurance Company, is dismissed.

MACMA.No.926 of 2016, preferred by the claimants, is allowed in part.

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. There shall be no order as to costs.

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

JUSTICE T.AMARNATH GOUD

Date: 06.01.2020
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