THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

M.A.C.M.A. No.1601 of 2017

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M.A.C.M.A. No.2246 of 2017

COMMON JUDGMENT:

1. These two appeals are field by the Insurance Company as well as the claimants against the award passed by the lower Court in M.V.O.P.No.3109 of 2014, dated 11.04.2017.

Brief facts :

2. In the motor vehicle accident that occurred on 02.11.2014 one person by name B.Kiran a private employee, aged 19 years, died. The dependants of the deceased who are parents and siblings of the deceased filed a claim petition, seeking compensation of Rs.20,00,000/-, whereas the Tribunal has awarded Rs.10,97,000/- (Rupees Ten lakhs and ninety seven thousand) only.

3. Challenging the award, MACMA.No.1601 of 2017 is filed by the Insurance Company and the ground raised by the Insurance Company are that the accident occurred while both the vehicles were travelling in the opposite direction

and there is a contributory negligence on the part of the deceased as well. Therefore, the entire liability cannot be fastened upon the Insurance Company alone when two vehicles are involved and both vehicles are travelling in the opposite direction. The learned counsel for the Insurance Company placed reliance upon the judgment of the Andhra Pradesh High Court in the case of ***Agnuru Jaya Ramulu vs Mohammed Afzal Miyan and another*[1]*.** Therefore, he submits that the Insurance Company can be held liable only for 50% of the compensation.

4. Insurance Company has also raised grounds of appeal with regard to the monthly income of the deceased taken at Rs.6,000/- by the Tribunal. He draws the attention of the Court to the contrary statements with regard to the nature of the duties performed by the deceased, whether a Supervisor or as a Consultant. He also points out that in the salary certificate produced by the company, in support of the deceased working with them, his salary was mentioned as Rs.3,000/- and Rs.3,000/- as allowance. According to him, there is a discrepancy in the salary claimed by the

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[1] 2006 ACJ 855

claimants. He further draws the attention of this court to the fact that 50% compensation has been awarded towards loss of future prospects but it should be restricted to 40% as per the judgment of the Apex Court in the case of ***National Insurance Co., Ltd., Vs. Pranay Sethi,***[2]**.**

5. In the claimants appeal, MACMA. No.2246 of 2017 the learned counsel for the petitioners/claimants submits that even though there was evidence produced by the company that the salary of the deceased was raised to Rs.9,000/- per month just before 15 days of his death, the Tribunal has not considered the same and restricted the monthly income to Rs.6,000/- only, accordingly, it has to be enhanced to Rs.9,000/- per month. He also submits that the claimants are eligible for consortium and other benefits as per the judgment of the Apex Court in the case of ***Magma General Insurance Co., Ltd. Vs. Nanu Ram Alias Chuhru Ram***[3].

6. As regards contributory negligence, the learned counsel for the petitioners submits that the judgment on

2. (2017) 16 SCC 680
3. 2018 LawSuit (SC) 904

which the Insurance Company is relying upon is distinguishable on facts. He submits that in the said case, there was head on collusion and therefore, the Court had come to the conclusion that there was contributory negligence on the part of both the vehicles. It is submitted in this case, the evidence of the independent witness was that the deceased was travelling on the end of the road, while the opposite vehicle had come in a rash and negligent manner and hit against the vehicle of the deceased, resulting in the death of the deceased. He submits that the Tribunal has considered the same and has held that there was rash and negligent driving by the opposite vehicle and therefore, there was no contributory negligence on the part of the deceased.

7. Having regard to the rival contentions and also the material on record and the judicial precedents relied upon by both the parties, this Court is of the considered view that though it is not in dispute that the accident occurred while both the vehicles were coming in the opposite direction, it cannot always be said that there is contributory negligence on the part of both the vehicles. The contributory negligence has to be proved with evidence on record. In the

case before this Court, it has been recorded that the deceased was proceeding on his motor cycle on the extreme left side of the road and it was due to the rash and negligent driving of the Hyundai car that the accident occurred. There was an independent witness i.e., PW2 who was examined and the Tribunal held that the accident occurred only due to rash and negligent driving of the Hyundai car. Unless and until this finding is rebutted with contra evidence, no negligence can be fastened on the deceased in this case. Therefore, the argument of contributory negligence is not accepted.

As regards enhancement of compensation :

8. The contention of the claimants was that the deceased was earning around Rs.9,000/- per month and his monthly income has to be enhanced to Rs.9,000/-, cannot be accepted in the absence of any cogent material in favour of the same. Admittedly, the deceased had not even passed Intermediate and at one stage it is mentioned that the deceased was working as Supervisor, consultant. With his educational qualification, it is not understandable as to how he would be performing his duties. Therefore, without

considering the nomenclature of his job, this Court feels that the monthly income of the deceased adopted at Rs.6,000/- by the Tribunal is reasonable and the compensation for loss of future prospects are also to be allowed at 40% as against 50% allowed by the Tribunal. The award is modified accordingly.

9. As regard the compensation towards funeral expenses and loss of estate is concerned, the claimants are entitled to Rs.15,000/- under each head with 10% enhancement thereof. Claimant No.1 and 2, being the parents are each entitled to filial consortium of Rs.40,000/- with 10% enhancement thereon. Compensation is modified accordingly.

10. In the light of the above mentioned discussion, the claimants of the deceased are entitled to the following amounts:

Sl.No.	Head	Compensation awarded
1.	Income	Rs.6,000/- per month
2.	Annual income	Rs.72,000/- (Rs.6,000x12=Rs.72,000)

3.	Deductions towards personal expenses	Rs.36,000/- (Rs.72,000 x 50%) (deceased was unmarried).
4.	Future Prospects	Rs.14,400/- (Rs.36,000 x 40%)
5.	Multiplier	18
6.	Loss of dependency	Rs.9,07,200/- (Rs.50,400x18)
7.	Loss of filial consortium – ***Magma General Insurance Co.Ltd Vs.Nanu Ram Alias Chuhru Ram – 2018 Law Suit (SC) 904***	Rs.88,000/- (10% enhancement = Rs.44,000/- each payable to claimants 1 and 2
8.	Funeral expenses	Rs.16,500/- (Rs.15000/- + 10% thereof)
9.	Loss of estate	Rs.16,500/- (Rs.15000/- + 10% thereof)
	Total	**Rs.10,28,200/-**

11. In the result, both the MACMAs are partly allowed without costs decreasing the compensation from Rs.10,97,000/- (Rupees Ten lakhs ninety seven thousand) only to Rs.10,28,200/- (Rupees Ten lakhs twenty eight thousand two hundred) only with costs thereon and interest thereon at 7.5% per annum from the date of filing of the claim petition till the date of realization against the

insurance company and the respondent/owner of the Hyundai Car are held jointly and severally liable to pay the compensation.

The insurance company is directed to deposit the compensation amount within a period of 60 days from the date of the receipt of a copy of this judgment after giving credit to deposit of amount, if any, already made. On such deposit, the claimants are permitted to withdraw the same without furnishing any security as per the following shares.

Claimant No.1 (Mother)	**Rs.4,78,200/-**
Claimant No.2 (Father)	**Rs.4,00,000/-**
Claimant No.3 (Brother)	**Rs.50,000/-**
Claimant No.4 (Brother)	**Rs.50,000/-**
Claimant No.5 (Sister)	**Rs.50,000/-**

12. Miscellaneous petitions pending, if any in these MACMAs, shall stand closed.

P.MADHAVI DEVI,J

Date: 24.06.2022.
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THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

M.A.C.M.A. No.1601 of 2017

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M.A.C.M.A. No.2246 of 2017

Date:24.06.2022

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