MACA NOS.865 AND 929 OF 2005

7. 25.04.2014 Both the appeals arise out of the award dated 28.7.2005 passed by the learned 1st Motor Accident Claims Tribunal, Keonjhar in M.A.C. Case No.231 of 1995 awarding compensation of Rs.51,300/- to the claimant-petitioner with interest at the rate of 9% per annum from the date of the application. The accident occurred on 2.7.1995. While the deceased was travelling by one Trekker, the vehicle had a head on collusion with one Truck coming from the opposite direction. The deceased died as a result of that accident. He was 25 years old at the time of his death. The claim application was filed against the insured owners and the insurers of both the vehicles. Finding that due to the negligence of the drivers of both the vehicles the accident occurred learned Tribunal has made both the Insurance Companies equally liable to pay the compensation.

2. Being aggrieved, the claimant has preferred M.A.C.A. No.865 of 2005 on the grounds that the evidence on the monthly income of the deceased was not taken into consideration, that instead of deducting 1/3rd of the monthly income towards the personal expenses of the deceased, who was a bachelor, the learned Tribunal has made deduction of 50% of the income, that application of multiplier of 13 is inappropriate and that the award towards funeral expenses, loss of estate and loss of consortium is too low.

3. The Oriental Insurance Company, who is O.P.No.4 before the learned Tribunal, has preferred the other appeal contending that the Trekker which was

insured with the Oriental Insurance Company was not at fault and for that the learned Tribunal ought to have fixed the entire liability on the insurer of the Truck.

4. The impugned award reflects that there was prevaricating statements on the income of the deceased. Therefore, the learned Tribunal did not accept the oral evidence. Observing that the deceased was an able bodied man, aged about 25, the Tribunal concluded that he was capable of earning at the rate of Rs.1,000/- per month. Taking that to be the monthly income of the deceased, the learned Tribunal further held that the contribution to the family made by the deceased was at the rate of Rs.300/- per month. Thus, the annual loss of dependency was worked out at Rs.3,600/-. This determination of the monthly income as well as contribution to the family by way of guess work appears to be on the lower side. If there were no convincing evidence on the monthly income of the deceased then the learned Tribunal ought to have taken the annual notional income of the deceased at Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act, 1988.

5. Admittedly the deceased was a bachelor and both of his parents were his dependants. In ***Smt. Sarala Verma and others Vs. Delhi Transport Corporation***, reported in ***AIR 2009 SC 3104***, it is held that if the deceased is a bachelor survived by parents and/or siblings, the deduction for personal and living expenses should be to the extent of 50%. Thus, the loss of dependency comes to Rs.7,500/- per year. So far

determination of the multiplier is concerned, the learned Tribunal has rightly determined the multiplier on the basis of the age of the parents. In ***New India Assurance Co. Ltd. Vs. A. Singara Vadivela***, reported in ***2003 (II) OLR 432***, the following observations made in a Supreme Court decision reported in ***2002 (3) T.A.C. (6) SC*** (H.S. Ahmed Hussain V. Irfan Ahmed) was followed.

> "The appropriate method of assessment of compensation is the method of capitalization of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependant, whichever multiplier is lower."

6. The impugned award reflects that the parents of the deceased were within the age group of 44 and 48. Therefore, the learned Tribunal has rightly chosen the multiplier of 13. Applying the same multiplier, the total loss of dependency comes to Rs.97,500/-. As regards the award of compensation towards funeral expenses, loss of estate and loss of consortium made by the Tribunal, it does not appear to be on the lower side. The father of the deceased died during pendency of the M.A.C. Case. The mother who is the appellant in M.A.C.A. No.865 of 2005 is thus found entitled to get compensation of Rs.1,02,000/-. Consequently, the amount awarded by the Tribunal needs to be enhanced.

7. So far the appeal preferred by the Oriental Insurance Company is concerned, no material is placed to support the contention that the accident occurred due to the sole negligence on the part of the driver of the Truck. The learned Tribunal has observed that there was a head

on collision and that Exts.1 and 2 reveal that due to negligent driving by the driver of both the vehicles, the accident took place. In the absence of materials to support the contention that the driver of the Truck was solely responsible for the accident, the plea taken by the appellant in M.A.C.A. No.929 of 2005 cannot be accepted. Consequently, the appeal fails.

8. In the result, M.A.C.A. No.929 of 2005 stands dismissed on contest and M.A.C.A. No.865 of 2005 is allowed in part. The impugned award is modified to the extent that the amount awarded as compensation now stands enhanced from Rs.51,300/- to Rs.1,02,000/- (Rupees one lakh two thousand). Rest part of the award stands confirmed.

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R. Dash, J.