HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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MACMA No. 3601 OF 2008

Between:

1. Orsu Padma
2. Orsu Hari Charan
3. Orsu Vamshi Krishna
4. Orsu Ramulamma

... Appellants/
Claimants

And

1. E.Venkanna
2. The Bajaj Allianz General Insurance

... Respondents

DATE OF JUDGMENT PRONOUNCED: 24.06.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ MACMA No.3601 OF 2008

% Dated 24.06.2024

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2. Orsu Hari Charan
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… Appellants/
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… Respondents

! Counsel for the Appellants: Smt.K.Rajitha

^ Counsel for the Respondents: Sri T.Mahender Rao for R2

>HEAD NOTE:

? Cases referred

[1] (2010) 11 Supreme Court Cases 153
[2] (2000) 6 Supreme Court Cases 359
[3] (2017) 16 SCC 680
[4] (2009) 6 SCC 121

HONOURABLE SRI JUSTICE K.SURENDER

MACMA.No.3601 of 2008

ORDER:

1. This appeal is filed by the claimants who are the legal representatives of the deceased seeking enhancement of the compensation granted by the Tribunal in OP.No.885 of 2005, dt.25.02.2008.

2. Respondent No.1 is the owner and respondent No.2 is the insurer of the offending vehicle i.e. Hero Honda Passion Plus Motor Cycle bearing No.AP.24 L 0116.

3. Heard.

4. When the case was taken for hearing learned counsel appearing for the Insurance Company would submit that MACMA.No.2787 of 2008 was filed by the Insurance Company and the said appeal was dismissed by this Court on 16.03.2023. Since it was not informed that the present appeal filed by the claimants was pending though the counsel for the claimants was present, it has to be held that the Judgment in MACMA No.2787 of 2008 had attained finality and the cause in the present appeal would not

survive for the reason of the lower court Judgment being merged with the High Court Judgment in MACMA No.2787/2008.

5. Learned Counsel appearing for the appellants/claimants would submit that the ground raised by the counsel for the Insurance Company is incorrect and not in accordance with the doctrine of merger. Firstly, there was no reference to the present appeal in the Judgment of this Court while disposing off the appeal of the insurance company vide MACMA.No.2787/2008.

6. Secondly, in view of the Judgments of the Honourable Supreme Court in ***Commissioner of Central Excise, Delhi v. Pearl Drinks Limited*** [1] and ***Kunhayammed and others v. State of Kerala and another*** [2]**,** the present appeal for enhancing the compensation can be considered irrespective of the dismissal of the insurance appeal.

7. In ***Commissioner of Central Excise's*** (supra 1) the Honourable Supreme Court held as follows;

> *"21. The Tribunal obviously failed to notice this distinction and proceeded to apply the doctrine of merger rather mechanically. It failed to take into consideration a situation where an order may be partly in favour and partly against a party in which event the part that goes in favour of the party can be separately*

[1] (2010) 11 Supreme Court Cases 153

assailed by them in appeal filed before the appellate court or authority but dismissal on merits or otherwise of any such appeal against a part only of the order will not foreclose the right of the party who is aggrieved by the other part of this order. If the doctrine of merger were to be applied in a pedantic or wooden manner it would lead to anomalous results inasmuch as a party who has lost in part can by getting his appeal dismissed claim that the opposite party who may be aggrieved by another part of the very same order cannot assail its correctness no matter the appeal earlier disposed of by the court or authority had not examined the correctness of that part of the order."

8. In ***Kunhayammed and others's case (supra 2)*** the Hnourable Supreme Court held as follows;

"7. The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognized. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.

12. The logic underlying the doctrine ofmerger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis

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[2] (2000) 6 Supreme Court Cases 359

before it either way __ whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

9. In the present case, admittedly, appeals were filed by both the insurance company and the claimants. Notices were served on either side in both the appeals. In the said circumstances, when the Insurance Company appeal was heard, it was the duty of both the parties to bring to the notice of the learned Judge regarding pendency of the appeal of the claimants. However, for the reasons unknown, it was not brought to the notice of the learned Judge regarding the present appeal. As seen from the order, it is not the finding of this Court in MACMA.No.2787 of 2008 that the award passed by the Tribunal was adequate or that it cannot be enhanced. Though, no such observation would be made in the appeal filed by the Insurance Company, however, nothing is indicated in the order that the present appeal filed by the appellants could not be taken up either expressly or impliedly.

10. Following the aforesaid Judgments of the Honourable Supreme Court, I find that the ground raised by the counsel for the Insurance Company is not tenable.

11. Insofar as the enhancement of compensation claimed by the claimants in the present appeal is concerned, the deceased was earning Rs.10,000/- per month as civil contractor. Exs.A8 and A9 reflects that he was a diploma holder having passed X class examination. In the said circumstances, this Court is inclined to consider the income of the deceased at Rs.5,000/- per month and accordingly grant compensation.

12. In view of the law laid down by the Honourable Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others***[3]**,** since the deceased was aged 26 years as on the date of accident, future prospects @ 40% of the income of the deceased has to be added which comes to Rs.2,000/-. Then the total income comes to Rs.7,000/-(5,000 + 40%). The annual income of the deceased comes to Rs.84,000/-p.a. (7,000 x 12). Since the dependents are 4 in number, 1/4 of the income of the deceased i.e. Rs.21,000/-(84,000 x 1/4) has to be deducted towards personal expenses which comes to Rs.63,000/- (84,000 – 21,000).

[3] *(*2017) 16 SCC 680

As per the PME report, the deceased was aged 26 years on the date of accident. Then, as per the Judgment of Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[4] the relevant multiplier is '18' and then the loss of income due to the death of the deceased comes to Rs.11,34,000/- (63,000 x 18).

13. As per the decision of the Constitutional Bench of Apex court in case of ***Pranay Sethi's case,*** the conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively and the same should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10%. Then the total consortium granted to wife and mother comes to Rs.96,800/- (40,000 x 2 + 10% for every three years) and Loss of Estate and funeral expenses comes to Rs.36,300/- (15,000 + 15,000 + Add 10% for every three years).

14. In total claimants are entitled to a total amount of compensation of Rs.12,67,100/-(11,34,000 + 96,800 + 36,300).

15. Accordingly, the appeal is allowed and the compensation granted by the Tribunal to the claimants is enhanced from Rs.4,51,383/- to Rs.12,67,100/-with interest @ 7.5% on the

[4] (2009) 6 SCC 121

enhanced amount from the date of petition till realization payable by respondents 1 and 2 in the OP. The amount shall be deposited within 6 weeks from the date of receipt of a copy of this order. The said amount of Rs.12,67,100/- shall be apportioned among the claimants in the same proportion in which original compensation amounts were directed to be apportioned by the Tribunal and the claimants are permitted to withdraw their respective shares without furnishing any security. The claimants have to pay the deficit Court fee or the Tribunal may deduct the amount required for the purpose of Court fee from the amount awarded to the claimants after respondents Insurance Company deposits the amount.

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

K.SURENDER, J

Date: 24.06.2024
Note:L.R .copy to be marked.
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