HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. Nos.1185 and 2319 of 2009

COMMON JUDGMENT:

Aggrieved by the Award dt: 24.11.2008 in M.V.O.P.No.121 of 2008 passed by the Chairman, M.A.C.T–cum–Principal District Judge, Kadapa (for short 'the Tribunal'), both claimants and Insurance Company preferred M.A.C.M.A.Nos.1185 and 2319 of 2009 respectively.

2) The facts in brief are that:

a) The claimants are the wife, children and parents of the deceased—Sankarapu Narasimhulu. On 07.12.2007 at about 2:00pm, the deceased started from the shop of M/s. Raja Jewellers, B.K.M. Street, Kadapa to go to his village Krishnapuram for lunch on his Suzuki Motorcycle bearing NO.AP 04 K 6129 and when he reached Vijaya Durga Temple on National Highway at Kadapa, one oil tanker bearing No.AP 03 V 2722 came from opposite direction being driven by its driver at high speed and in a rash and negligent manner, dashed the deceased. Thereby the deceased sustained grievous injuries and succumbed to injuries. The claimants on the pleas that the oil driver was responsible for the accident and that due to abrupt death of deceased they became destitutes, filed MVOP No.121 of 2008 against respondents 1 and 2, who are the owner and insurer of the oil tanker and claimed Rs.7,00,000/- as compensation under different heads.

b) Respondent No.1 filed written statement denying the material averments made in the petition and urged to put the claimants in strict proof of the same. R.1 further denied the age, avocation and income of the deceased. R.1 contended that the accident was occurred due to rash and negligent driving by the deceased himself. He thus prayed to dismiss the O.P.

c) Respondent No.2/Insurance Company while denying the material averments made in the petition contended that the accident was occurred due to negligent driving by the deceased himself. R.2 also contended that O.P is bad in law for non-joinder of necessary parties. Finally R.2 contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A.1 to A.6 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence though held that the claimants are entitled to Rs.11,80,000/- as compensation under different heads as follows:

Loss of dependency	Rs.11,52,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 2,000/-

Loss of consortium Rs. 11,000/-

Total Rs.11,80,000/-

However, restricted the compensation to Rs.7,00,000/- with interest @ 6% p.a as the claim of the claimants being only Rs.7,00,000/-.

Hence the appeals:(1) MACMA No.1185 of 2009 by the claimants challenging the quantum of compensation as inadequate and (2)MACMA No.2319 of 2009 by R2/Insurance Company questioning the propriety of fastening liability on it.

3 a) MACMA No.1185 of 2009: It is to be noted that pending appeal, appellant No.4—Sankarapu Balaiah died and appellants 1 to 3 and 5 are recognized as his L.Rs. Heard arguments of Sri J.Seshagiri Rao, learned counsel for appellants/claimants and Sri Ravi Shankar Jandhyala, learned counsel for R2/Insurance Company. Though Sri Arifullah, learned counsel filed appearance on behalf of R.1 but there is no representation on his behalf.

b) MACMA No.2319 of 2009: Heard arguments of Sri Ravi Shankar Jandhyala, learned counsel for appellant/Insurance Company and
Sri J.Seshagiri Rao, learned counsel for respondents 1 to 3 and 5. Notice sent to R.6 not yet returned.

4) The parties in these two appeals are referred as they

are arrayed before the Tribunal.

5) Learned counsel for appellants/claimants Sri J. Seshagiri Rao, while supporting the award argued that the Tribunal in fact came to conclusion that the claimants are entitled to Rs.11,80,000/- but erroneously restricted the compensation to Rs.7,00,000/- on the ground that the claim was only for Rs.7,00,000/-. He submitted that the Tribunal has power to award more compensation than claimed in suitable cases. He submitted that in order to avoid such controversy he filed MACMA MP No.2390 of 2009 and amended his claim to Rs.11,80,000/-. He thus prayed to award Rs.11,80,000/- as arrived at by the Tribunal with interest @ 7.5% p.a instead of 6% p.a as awarded by the Tribunal. Incidentally, he prayed to dismiss the appeal filed by the Insurance Company.

6 a) Per contra, learned counsel for Insurance Company Sri Ravi Shankar Jandhyala, criticized the award firstly on the contention that it is a case of head on collision between the two vehicles and therefore, the Tribunal ought to have apportioned the liability on both the drivers.

b) Secondly, impugning the compensation he argued that the Tribunal has erred in accepting the monthly salary of the deceased as Rs.8,000/- without there being any cogent evidence. Expatiating it, he submitted that though PW.3 deposed that he was paying Rs.8,000/- p.m, did not produce any documentary evidence such as aquittance register or account books in support of his oral assertion and on the other hand, PW.2 who is the colleague of deceased deposed that himself and the deceased were working in the shop of PW.3 as Clerks (Gumastha). His evidence thus shows that the deceased was working not as Goldsmith but only as a clerk and hence he was not a skilled worker. In that context, it is highly unbelievable that PW.3 would pay a huge amount of Rs.8,000/- p.m. At any rate, for non-production of any authenticated record the Tribunal ought not to have been carried away by the evidence of PW.3 to fix the monthly earnings of the deceased at Rs.8,000/- and due to this folly, compensation was unduly escalated. He thus prayed to allow his appeal and apportion the liability between the two drivers and fix compensation accordingly.

7) In the light of above rival arguments, the point for determination is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **<u>POINT</u>**: The aspect of contributory negligence is concerned, during trial the Insurance Company has not produced any contra evidence to the eye witness evidence placed by the claimants. PW.2 who was the colleague and proceeding behind the deceased on another two wheeler

and lodged Ex.A.1—FIR, has clearly deposed that the deceased was proceeding on his motor cycle in normal speed on the left side of the road by observing the traffic rules and at that time the offending oil tanker came from opposite direction being driven by its driver at high speed and in a rash and negligent manner and without blowing horn and dashed against the motorcycle of the deceased and caused the accident. He avouched that the accident was occurred only due to the rash and negligent driving by the driver of the oil tanker. He was thoroughly cross-examined by respondents 1 and 2 but nothing useful could be extracted to impeach the credibility of his evidence. Thus his evidence regarding the manner of occurrence of the accident demonstratively showed that the driver of the oil tanker was at fault. The oral evidence of PW.2 was supported by Ex.A.4—charge sheet which shows the police after investigation found fault with the driver of oil tanker and filed case against him. As stated supra, no contra evidence was placed by the respondents to prove that the driver of the oil tanker was innocent or that the deceased too contributed for the accident. As such, the Tribunal rightly fixed the liability on the driver of oil tanker alone. This finding being immaculate and impregnable, the Insurance Company cannot contend otherwise.

9) Then compensation is concerned, as stated earlier, the Tribunal awarded Rs.11,52,000/- towards loss of

dependency treating the monthly salary of the deceased as Rs.8000/- and taking ‘18’ as multiplier. This fixation is vehemently opposed by the learned counsel appellant/ insurance company. I find some force in its contention. Though PW.3 deposed that the deceased working as Goldsmith in his jewellery shop and getting salary of Rs.8000/- per month, curiously, he did not produce any authenticated records to buttress his claim. His being a jewellery shop, there can be no doubt that he should maintain records for his business transactions and also about the particulars of his employees. Apart from lack of documentary evidence regarding the salary, there is also no clarity on the nature of the job entrusted to the deceased. PW.3 no doubt claimed that the deceased was working as Goldsmith in his jewellery shop, however, PW.2, the colleague of the deceased, mentioned in Ex.A.1—FIR that himself and deceased were working as clerks. Be that it may, Ex.A.6-Identity Card issued by Swarnakarula Sankshema Sangam, Kadapa, a Registered Association, shows that the deceased was a Goldsmith doing Gold Sada Works. So, from the available evidence, it can be said that the deceased was a Goldsmith but there is no clarity with regard to the nature of work he was performing in Raja Jewelers (whether Goldsmith or a mere Clerk). Further, there is no authenticated record regarding the salary of the deceased. In these circumstances, the oral assertion of

PW.3 cannot be given much weightage because the possibility of exaggeration to help the family of his deceased employee cannot be ruled out. Therefore, considering the age of the deceased, nature of the work in which he has proficiency and also his employment, his salary is accepted at Rs.6000/- per month. His gross annual income comes to Rs.72,000/-. The Tribunal deducted 1/3rd towards his personal expenditure. However, following the decision of the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***[1]***,*** 1/4th has to be deducted because the number of his dependent family members is ‘5’. Thus, his annual contribution is Rs.54,000/-. Following the same decision, ‘17’ is accepted as multiplier. Thus, loss of dependency comes to **Rs.9,18,000/-** (Rs.54,000/- x 17).

10) The Tribunal awarded meager amounts towards funeral expenses and loss of consortium. Following the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and Others***[2]***,*** compensation for funeral expenses is enhanced to Rs.25,000/- and compensation for loss of consortium to Rs.35,000/- considering that the first claimant lost her husband at the prime of her youth. Further, for loss of love and affection of the deceased towards his tender aged daughters, a sum of **Rs.30,000/-** is awarded. Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs.	9,18,000/-
Loss of estate	Rs.	15,000/-
Funeral expenses	Rs.	25,000/-
Loss of consortium	Rs.	35,000/-
Loss of Love and affection	Rs.	30,000/-
Total	Rs.	10,23,000/-

Hence, the compensation is enhanced by Rs.3,23,000/- (Rs.10,23,000/- minus Rs.7,00,000/-).

11) It is informed that pending appeal Sankarapu Balaiah, who is the 4th appellant/4th claimant in MACMA No. 1185 of 2009 and 4th respondent in MACMA No. 2319 of 2009 died. Hence, his share of compensation shall be allotted to his wife Sankarapu Subbamma.

12) In the result, both the appeals are disposed of and ordered as follows:

1) M.A.C.M.A.No.2319 of 2009 filed by the Insurance Company is dismissed.

2) MACMA No.1185 of 2009 filed by the claimants is partly allowed and compensation is enhanced from Rs.7,00,000/- to Rs.10,23,000/- with proportionate costs and interest @ 6% p.a., from the date of OP till the date of realization.

3) Respondents in the OP shall deposit the compensation amount within two months from the date of this Judgment, failing which,

execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 27.10.2015
scs/eha

[1] 2009 ACJ 1298 (SC) = AIR 2009 SC 3104

[2] 2013ACJ 1403 (SC)