THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.2810 of 2009

JUDGMENT:

This appeal is filed by the Insurance Company/respondent No.2 assailing the judgment and award, dated 25.10.2008 passed in O.P.No.1017 of 2007 on the file of the Motor Accident Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

Petitioner No.1 is the wife, petitioner Nos.2, 3 and 4 are sons and petitioner No.5 is the mother of late Mahender Kumar Jain.

On 11.03.2007 at about 5:30 PM, L.Mahender Kumar Jain (hereinafter referred to as 'the deceased') was proceeding to his factory situated at Jeedimetla on a motorcycle and when he reached the factory, the driver of the Eicher Mini Truck bearing No.AP 37 W 4903 (for short, 'the crime vehicle') had driven the same in a rash and negligent manner and dashed against the motorcycle of the deceased from behind. Due to the accident, the deceased died on the spot. Basing on the complaint, the Station House Officer, Jeedimetla registered a case in Crime No.231 of 2007 under Section 304-A I.P.C. against the driver of the crime vehicle. By the time of accident, the deceased was aged about 42 years and used to earn Rs.10,000/- per month as business man. The petitioners are dependents on the income of the deceased. Respondent No.1 being the owner of the crime vehicle is vicariously liable for the wrongful act done by his driver. The crime vehicle was insured with the second respondent –

Company at the relevant point of time and therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. Hence, the petition claiming compensation of Rs.12,00,000/-.

4. The first respondent remained *ex-parte*. The second respondent–Insurance Company filed counter denying the material averments *inter alia* contending that the accident occurred due to rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the crime vehicle. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether death of Mahender Kumar Jain on 11-3-2007 is due to rash and negligent driving of driver of Mini Truck bearing No.AP 37 W 4903?
2. Whether the claimants are entitled to any compensation. If so against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondent No.2, no oral evidence was adduced and Ex.B.1 was marked.

7. Basing on the material available on record, the Tribunal partly allowed the petition by granting compensation of Rs.10,00,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondent No.2 – Insurance Company preferred the present appeal.

9. Sri B.Devanand, the learned counsel for the appellant, strenuously submitted that the Tribunal has not considered the

material available on record and granted compensation on erroneous and untenable grounds. He further submitted that the Tribunal committed error while applying the multiplier '15' instead of '14'.

10. Per contra, Sri V.Atchutaram, the learned counsel for the respondents, submitted that the Tribunal awarded the compensation basing on Ex.A.6, Income Tax returns and Ex.A.7, Pan Card. He further submitted that the appropriate multiplier to be applied in this case is '15' and not '14'.

11. The Tribunal gave a specific finding that the accident occurred due to rash and negligent driving of the driver of the crime vehicle. Respondent No.2 – Insurance Company did not choose to file an appeal challenging the finding of the Tribunal so far as the manner of the accident is concerned. The finding of the Tribunal has attained finality so far as the manner of the accident and *factum* of death of the deceased are concerned. The oral testimony of PW.1 is fully supported by the recitals of Ex.A.1, C.C. of F.I.R. and Ex.A.2, C.C. of charge sheet so far as the manner of the accident is concerned. The oral testimony of PW.1 coupled with recitals of Exs.A.3, C.C. of P.M.E report and A.5, C.C. of Inquest clearly reveals that the deceased died due to the injuries sustained in the accident. Hence, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the crime vehicle.

12. A perusal of the record reveals that the Tribunal determined the income of the deceased as Rs.84,000/- per annum basing on the Income Tax returns pertaining to the assessment years 2005-2006 to 2007-2008 (Ex.A.6). It is not in dispute that the deceased was a business man by the time of accident. To substantiate the income of the deceased, the petitioners placed reliance on the Income Tax returns, Ex.A.6 and Pan Card, Ex.A.7. The fact remains that the deceased was an income tax assessee by the time of his untimely

death. The Court can safely place reliance on the Income Tax returns filed by the petitioners. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal so far as the annual income of the deceased is concerned.

13. The predominant contention of the learned counsel for the appellant is that the Tribunal committed grave error by taking the multiplier as '15'. It is not in dispute that at the time of death, the deceased was aged about 42 years. As per the Second Schedule provided under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the M.V.Act'), the appropriate multiplier applicable is '15' for the age group of 45 years.

14. The contention of the learned counsel for the appellant is that the Tribunal ought to have applied the multiplier as per **Sarla Verma v. Delhi Transport Corporation**[1]**,** which is '14'. **Sarla Verma'**s judgment was delivered on 15.02.2009 whereas the Tribunal disposed of the case on 25.10.2008. A perusal of the record clearly reveals that the impugned judgment was delivered much prior to the judgment in **Sarla Verma**'s case. The Tribunal has taken the multiplier by following the Second Schedule of the M.V.Act. If this Court follows the **Sarla Verma**'s case, the respondents are entitled for more compensation than the amount awarded by the Tribunal. Admittedly, the petitioners have not preferred any appeal. In the absence of appeal or cross-objections, it is not fair on the part of this Court to enhance the compensation. The Court can interfere if there is any illegality in the Award passed by the Tribunal. In the instant case, the Tribunal rightly applied the multiplier. The Tribunal has taken the appropriate multiplier basing on the Second Schedule of the M.V.Act.

15. Viewed from any angle, the submissions made by the learned counsel for the appellant is not sustainable either on factual or legal aspects. A perusal of the record clearly reveals that the Tribunal has

granted just and reasonable compensation to the petitioners/claimants to meet the ends of justice.

16. Having regard to the facts and circumstances of the case, I am of the considered view that there are no grounds much less valid grounds to interfere with the well considered judgment and Award passed by the Tribunal.

17. Accordingly, the Appeal is dismissed. There shall be no order as to costs.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

21st January, 2015
lvd

[1]. 2009 ACJ 1298