THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3864 of 2009

&

Cross Objections (SR) No.8115 of 2010

Common Judgment:

Both the Insurance Company and the Claimants have challenged the Award dated 04-06-2009 in OP No.1886 of 2007 passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal), the former in the form of instant appeal and the latter in the form of cross-objections.

2) The factual matrix of the case is thus:

a) On 03-09-2007 at about 7.30 am, when the deceased-Kujeeb Ali was driving the Matador Van bearing No. AP 0W 5936 from Hyderabad to Basara and when it reached Muppireddypally village, a lorry bearing No. AP 1T 2555 being driven by its driver in a rash and negligent manner came in the opposite direction and dashed the Matador Van. In the resultant accident, the deceased received grievous injuries and died on the spot. It is averred that lorry driver was responsible for the accident and due to the sudden demise of deceased, the claimants became destitutes. On these averments the claimants, who are wife, daughter and mother of the deceased, filed O.P.No.1886 of 2007 under Section 163-A of Motor Vehicles Act, 1988 (for short "M.V Act") against respondents 1 and 2, who are the owner and insurer of the lorry and claimed Rs.5,50,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter contending that there is no negligence on the part of the driver of the lorry and the van driver himself drove the vehicle in a rash and negligent manner and caused for the accident. R.2 further contended that compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of the claimants. No oral or documentary evidence adduced on behalf of the respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.3,79,000/- with costs and interest at 7.5% p.a as below:

Loss of dependency Rs.3,64,000/-

Loss of consortium Rs. 15,000/-

Rs.3,79,000/-

Hence the appeal and cross objections challenging the Award.

3) Heard Sri A. Jayanthi, learned counsel for appellant/Insurance Company and Sri U.P.Rao, learned counsel for claimants—Cross objectors. Though Notice served on R.4-Owner, there is no appearance on his behalf.

4) The parties in this appeal are referred as they stood before the Tribunal.

5 a) Learned counsel for appellant/Insurance Company while

fulminating the Award firstly argued that the Tribunal erred in holding that the lorry driver was at fault. She contended that the deceased/van driver overloaded the Matador Van and drove his vehicle at high speed and in a rash and negligent manner and went on wrong side and caused the accident and as such, the Tribunal ought to have found him guilty or at least held him equally responsible for the accident along with lorry driver. On this argument, the learned counsel prayed to exonerate the Insurance Company or alternatively to fix liability on both the vehicles.

b) Secondly, commenting on the cross objections filed by the respondents/claimants seeking enhancement of compensation, learned counsel for appellant argued that the compensation awarded by the Tribunal under different heads is a just and reasonable amount and there is no need to revise the same as prayed for.

6 a) Per contra, learned counsel for respondents/claimants firstly argued that the driver of the lorry alone was responsible for the accident and though the Insurance Company contended that the deceased van driver was responsible for the accident, it has not adduced any evidence and therefore, the appellant cannot raise that issue now.

b) Secondly, questioning the quantum of compensation awarded by the lower Tribunal, learned counsel submitted that the Tribunal granted a low compensation. Expatiating it, he submitted that tribunal has not at all awarded any compensation for funeral expenses. Further, the Tribunal took a low amount of Rs.3,000/- as monthly income of the deceased. It ought to have taken at least Rs.4000/- per month following the G.O.Ms.No.81, Labour, Employment, Training and Factory (Lab-II), dt.2.12.2000 and should have added reasonable amount towards future prospectus of the deceased. In this regard, he relied upon a decision of the Apex Court in ***Rajesh***

and others V. Rajbir Singh and Others. He further argued that the Tribunal ought to have awarded Rs.1,00,000/- for loss of consortium as held in ***Rajesh's*** case (1 supra). He also argued that the Tribunal took a low multiplier which needs upgraded. He, thus, prayed to revise the compensation.

7) As a reply, learned counsel for appellant/insurance company argued that the claim petition was filed under Section 163-A of M.V.Act and therefore, compensation has to be fixed strictly adhering to said Section and II Schedule appended to the said Section only.

8) In the light of the above rival arguments, the point for determination in this appeal is:

"Whether the Award passed by the Tribunal is factually and legally sustainable or needs interference ?"

9) **POINT**: In the appeal, the first contention on behalf of the appellant/insurance company is that the deceased/van driver himself was at fault but not the lorry driver and the Tribunal erroneously fixed liability on the lorry driver. On a keen perusal of the record, I am unable to accept this contention. Basing on the evidence of pw2—eyewitness and ExA.2—Charge Sheet, the Tribunal held that the lorry driver was responsible for the accident. No contra evidence was adduced before the Tribunal by the Insurance Company though contended that the deceased himself was at fault but not the lorry driver. As such, the appellant cannot raise the same issue in this appeal.

1 0) Now coming to the quantum of comepnsation, the Tribunal having regard to the fact that the deceased was a driver and as there was no proof of his employment and salary, notionally fixed his

income at Rs.3,000/- and after deducting 1/3rd and multiplying his annual income of Rs.24,000/- with multiplier " 15.15" arrived at the loss of earnings at Rs.3,63,000/- and rounded it to Rs.3,64,000/-. The claimants contend that the aforesaid compensation is a low one. As stated supra, learned counsel for respondents/claimants produced G.O.Ms.No.81, Labour, Employment, Training and Factory (Lab-II), dt. 2.12.2000 which came into force on 29.03.2001. In this G.O, minimum wages of different categories of Private Motor Transport employees is mentioned. As per Ex.A.6—Driving License, the deceased holds driving license to drive light motor vehicles and motor cabs. For such driver, the G.O fixed monthly wages at Rs.3,567/-. Learned counsel for claimants argued that the Tribunal ought to have fixed the salary of the deceased at Rs.4,000/- per month or atleast Rs.3,567/- as mentioned in the said G.O. It appears the said G.O was not filed before the lower Tribunal for its perusal. The perusal of Judgment shows that since there was no proper evidence regarding the employment of the deceased, the Tribunal notionally fixed his monthly income at Rs.3000/- and in my view, the same cannot be found fault. However, a reasonable amount has to be added towards future prospects, which the Tribunal has failed to consider. Hence, an amount of Rs.500/- is added towards future prospects making the monthly income of the deceased at Rs.3,500/-.

11) Now coming to the selection of multiplier, the Tribunal having regard to the age of the deceased as 34 years, selected "15.15" as multiplier. As per the II Schedule, the multiplier for the persons in the age group of 30-35 years is '17'. Whereas, as per the decision of the Hon'ble Apex Court in ***Sarla Verma V. Delhi Transport Corporation***, the multiplier is '16'. It is true that learned counsel for appellant/insurance company argued that the above decision can be made applicable to the cases under 166 of M.V.Act. However, having regard to the fact that the Tribunal took a lesser multiplier than the one provided in the II Schedule, it is apposite to take '16' as multiplier. Thus, the compensation for the loss of dependency comes to

Rs.4,48,000/- (Rs.3,500 X 12 X 16 X 2/3). Then it is seen that the Tribunal has not awarded any compensation for funeral expenses. Hence, a sum of Rs.10,000/- is awarded in that regard. The Tribunal awarded Rs.15,000/- towards loss of consortium. Having regard to the fact that the wife of the deceased lost her husband in the prime of her youth, compensation for loss of consortium is enhanced to Rs.25,000/-. Thus, total commensuration payable to the claimants is detailed as below:

Loss of dependency Rs.4,48,000/-

Funeral Expenses Rs. 10,000/-

Loss of consortium Rs. 25,000/-

Rs.4,83,000/-

Thus, the compensation is enhanced by Rs.**1,04,000/-** (RS.4,83,000 minus Rs.3,79,000).

12) In the result, the Appeal and the Cross Objections are disposed of and ordered as follows:

1. MACMA No.3864 of 2009 filed by the Insurance Company is dismissed.

2. Cross Objections (SR) No.8115 of 2010 filed by the claimants are allowed and compensation is enhanced by Rs.**1,04,000**/- with proportionate costs and interest at 7.5 % per annum from the date of OP till realisation.

3. Respondents Nos. 1 and 2 in the OP are directed to 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 in all these appeals, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.10.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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