

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A.No.130 of 2010**

**JUDGMENT:**

Challenging the compensation awarded in M.V.O.P.No.814 of 2006 dated 23.06.2008 by the Chairman, M.A.C.T-cum- District Judge, Kadapa (for short “the Tribunal”), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants are the parents of deceased girl—Kolangi Padmavathi. Their case is that deceased was 8 years old and studying Third Class in English Medium School and claimants were working as coolies at a brick kiln. On 11.12.2006, the deceased along with her aunt went to brick kiln and after staying some time she was returning home along with her aunt. On the way the deceased and her aunt stood on the left side of the Kadapa—Kurnool National High Way waiting for Mathamma—the co-daughter-in-law of her aunt who went to the other side of the road to fetch clothes from dhobi. At that time a Tata Sumo Van bearing registration No.MH 12 BA 4940 came at high speed being driven by its driver in a rash and negligent manner and dashed the deceased and caused her instantaneous death. It is averred that vehicle driver was responsible for the accident and due to abrupt death of deceased her parents lost all their future hopes on her. On these averments they filed M.V.O.P.No.814 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”)

against respondents 1 and 2, who are the owner and insurer of the offending van and claimed Rs.1,50,000/- as compensation under different head mentioned in OP.

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

c) Respondent No.2/Insurance Company filed counter and opposed the petition contending that accident was occurred due to the fault of deceased herself, as she crossed the road unmindful of the vehicles passing on the road.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. No oral or documentary evidence was adduced by the respondents.

e) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.75,000/- with costs and interest at 6% p.a under different heads as follows:

|                                                                        |               |
|------------------------------------------------------------------------|---------------|
| Loss of love and affection,<br>loss of income and future<br>expectancy | Rs. 58,000-00 |
| Loss of estate                                                         | Rs. 15,000-00 |
| Transportation and funeral expenses                                    | Rs. 2,000-00  |
|                                                                        | -----         |
| Total                                                                  | Rs. 75,000-00 |
|                                                                        | -----         |

Hence, the appeal by the claimants.

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

4) Heard arguments of Sri D.Kodanda Rami Reddy, learned counsel for appellants/ claimants and Smt. A.Jayanthi, learned

counsel for respondent No.2/ Insurance Company. Notice sent to R1/owner was returned as refused.

5 a) Fulminating the award, learned counsel for appellants firstly argued that compensation awarded by the Tribunal was too low and devoid of merits inasmuch as the Tribunal has not taken into consideration the guidelines issued by the Apex Court in successive judgments with regard to computation of compensation in child death cases.

b) Secondly, he argued that rate of interest awarded by the Tribunal is too low and claimants are entitled at the rate of 7.5% p.a. He therefore, prayed to re-assess the award and grant just and reasonable compensation.

6 a) In oppugnation, learned counsel for 2<sup>nd</sup> respondent/Insurance Company supported the award stating that compensation was an appropriate one in all respects and there is no need to interfere with the same.

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

*“Whether compensation awarded by the Tribunal is just and reasonable or needs interference?”*

8) **POINT:** Having heard both sides and perused the latest case law of the Apex Court rendered in child death cases, this Court is of the considered view that compensation awarded by the Tribunal needs spruce up in tune with the guidelines issued by the Apex Court. It may be noted that in the latest decision reported in ***Puttamma and others v. K.L.Narayana Reddy***

**and another**<sup>[1]</sup>. The Apex Court while expressing its anguish over Central Government's not amending the Second Schedule of MV Act in view of Section 163-A (3) observed thus:

*"Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that the children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988."*(Emphasis supplied)

a) No doubt, Apex Court has given the above method of calculation in respect of claim petitions filed under Section 163A of MV Act. However, in my considered view, the cited decision can be made applicable to the instant case also filed under Section 166 of MV Act for the purpose of computation of compensation.

b) Therefore, following above decision, first of all compensation has to be assessed as per Second Schedule to know whether the same is below or above the minimum limit as prescribed in **Puttamma's** case (1 supra). Since the deceased in the instant case is 8 years old a suitable multiplier has to be selected. The Apex Court in the case of **Reshma Kumari and others v. Madan Mohan and another**<sup>[2]</sup> held as follows:

*“In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in **Sarla Verma vs. Delhi Transport Corporation** {(2009)6 SCC 121} should be followed.”*

b) Following the above, multiplier ‘15’ and notional income of Rs.15,000/- p.a. are to be taken. After deducting 1/3<sup>rd</sup>, the net annual income comes to Rs.10,000/-. Thus, total compensation for loss of future dependency comes to Rs.1,50,000/- (Rs.10,000/- x 15). To this, a sum of Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses as granted by the Tribunal have to be added. Thus, the total compensation comes to Rs.1,67,000/-. Since this amount is higher than the minimum limit prescribed in **Puttamma’s** case (1 supra), the same is approved. So, the claimants are entitled to compensation of Rs.1,67,000/-. This point is answered accordingly.

9) In the result, this MACMA is allowed and ordered as follows:

- a) The compensation is enhanced to Rs.1,67,000/- with costs and interest @ 7.5% p.a. from the date of OP till the date of realization.
- b) The respondents in 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.
- c) The claimants are directed to deposit the additional court fee on differential compensation amount of Rs.17,000/- (Rs.1,67,000/- minus Rs.1,50,000/-) within

one month from the date of this judgment. Registry shall issue CC to the claimants only upon payment differential court fee.

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

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**U.DURGA PRASAD RAO, J**

Date: 06.03.2015

**Note:** L.R. copy to be marked: Yes/No  
Murthy

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[\[1\]](#) 2014 ACJ 526 (SC)

[\[2\]](#) 2013 ACJ 1253 (SC)