

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2935 of 2009

JUDGMENT:

Aggrieved by the Award dated 13.06.2001 in O.P.No.409 of 1997 passed by the Chairman, MACT-cum-Additional District Judge, Medak at Sangareddy (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

- a. Claimants 1 and 2 are parents, 3 to 6 are children and 7 is the wife of deceased—Mohd. Isaq and he was doing vegetable business. While so, on 10.11.1997, when the deceased along with one Mohd. Ahmed Pasha was going on Hero Honda Motorcycle to Zaheerabad and when they reached near Huggeli bus stop, an Ambassador car bearing No.AP 23 B 2223 and dashed against the motorcycle and thereby the deceased suffered grievous injuries and died on the spot. It is averred that accident was occurred due to rash and negligent driving of the car driver. On this plea, the claimants filed O.P.No.409 of 1997 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2 who are the owner and insurer of the offending car and claimed Rs.2,10,000/- as compensation.
- b. R1 remained ex-parte.
- c) R2/Insurance Company contended that it was not the driver of the car but the deceased himself was responsible for the accident. R2 denied the earning capacity of the deceased. It is further contended that claim is highly excessive and exorbitant.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimants. Policy copy filed by respondents was

marked as Ex.B.1.

e) The Tribunal considering both oral and documentary evidence held that accident was occurred due to fault of car driver and awarded Rs.1,28,000/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of dependency Rs. 1,08,000-00

Pecuniary damages Rs. 15,000-00

Loss of consortium Rs. 5,000-00

Total Rs. 1,28,000-00

Hence, the appeal by claimants.

3) The parties in the appeal are referred as they arrayed before the lower Tribunal.

4) Heard arguments of Sri K.Raji Reddy, learned counsel for appellants/claimants and Smt.A.Jayanthi, learned counsel for R2/Insurance Company. R1 dismissed for default vide court order dated 26.03.2004.

5) Learned counsel for appellants/claimants vehemently argued that compensation awarded by the Tribunal is very low and quite inadequate and needs enhancement.

6) On the other hand, learned counsel for R2/Insurance Company submitted that compensation awarded by the Tribunal is just and reasonable and there is no need to revise the same. She thus prayed for dismissal of the appeal.

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

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

8) **POINT:** Accident, involvement of Ambassador Car bearing No.AP

23 B 2223 and death of deceased are not in dispute. A perusal of the record shows that compensation under different heads needs enhancement as it is not just and reasonable.

a) Compensation for loss of dependency is concerned, the Tribunal took a low monthly income at Rs.900/- though the deceased was doing vegetable business. Having regard to the nature of his business a monthly income of Rs.1,200/- at the relevant period could be reasonable. After deducting 1/3rd towards his personal expenditure, net contribution comes to Rs.800/- p.m. and net annual contribution to the family comes to Rs.9,600/- (Rs.800 x 12). Hence, the loss of dependency will be Rs.**1,44,000/-** (Rs.9,600/- x 15).

b) So far as compensation under other heads is concerned, the Tribunal awarded Rs.15,000/- towards pecuniary damages and Rs.5,000/- towards loss of consortium. I consider that compensation under these heads also is not proper. Compensation for funeral expenses shall be Rs.**25,000/-** as held by the Apex Court in the case of ***Rajesh v. Rajbir Singh***.

c) Compensation for loss of consortium is concerned, since the 7th claimant (wife) lost her husband at her prime youth, she deserves Rs.**35,000/-** towards loss of consortium.

d) Apart from this, the claimants 3 to 6 who are minors, lost love and affection of their father, a sum of Rs.**20,000/-** is awarded on that count.

Thus the total compensation payable to the claimants under different heads can be stated thus:

Loss of dependency	Rs. 1,44,000-00
Funeral expenses	Rs. 25,000-00
Loss of consortium	Rs. 35,000-00
Loss of love and affection	Rs. 20,000-00

Total	Rs. 2,24,000-00

Thus, compensation is enhanced by Rs.**96,000/-** (Rs.2,24,000/- minus Rs.1,28,000/-)

Having regard to the fact that Court is empowered to grant more compensation than prayed for in appropriate cases, as held by Apex Court in ***Nagappa v. Gurudayal Singh*** the claimants are awarded Rs.**2,24,000/-** considering it as just and reasonable.

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

- a. The compensation is enhanced by Rs.**96,000/-** with proportionate costs and simple interest @ 7.5% per annum from the date of OP till the date of realization.
- b. The claimants are directed to deposit the additional court fee on the enhanced amount of Rs.**14,000/-** (Rs.2,24,000/- minus Rs.2,10,000/-) within one month from the date of this judgment.
- c. The respondents 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.
- d. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 28.09.2015

Murthy