HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1770 of 2009

JUDGMENT:

Aggrieved by the Award dated 19.01.2009 in M.V.O.P.No.85 of 2008 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) Claimant No.1 is the wife, claimants 2 and 3 are children; claimants 4 and 5 are parents of the deceased—Somesula Satyanarayana respectively. While so, on 20.11.2007, the bus tyre belonging to respondent was punctured on Kadapa—Rajampet Highway near Kothula vanka (Kanumalopalli) bridge and when the deceased along with another employee by name Nagamani were attending the repair work at about 3:10am, the driver of the bus bearing No.AP 11 Z 1105 drove the bus in a rash and negligent manner, came from behind and hit the stationed bus, due to which, the joint of the stationed bus pierced into the stomach of the deceased and he succumbed to injuries. It is averred that accident was occurred due to rash and negligent driving by the driver of bus bearing No.AP 11 Z 1105. On these pleas, the claimants filed M.V.O.P.No.85 of 2008 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.12,00,000/- as compensation.

b) The respondent/APSRTC who is the employer of both deceased as well as driver of offending bus contested the OP and submitted that the alleged offending bus more or less merely touched the stationed bus from behind. It disowned its liability on the ground that there was no fault on the part of the driver of alleged offending bus as he drove the bus carefully.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondent.

d) The Tribunal on appreciation of both oral and documentary evidence had awarded Rs.6,00,000/- as compensation against respondent with proportionate costs and interest @ 6% p.a. under different heads as below:

Loss of dependency	Rs. 5,78,560-00
Loss of estate	Rs. 15,000-00
Funeral expenses	Rs. 2,000-00
Loss of consortium	Rs. 4,440-00
Total	Rs. 6,00,000-00

Hence, the appeal by claimants.

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

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

Counsel for APSRTC/ respondent.

5 a) Challenging the compensation as low, learned counsel for appellant firstly argued that the Tribunal failed to take future prospects of the deceased into consideration for computing compensation for loss of future earnings and similarly while computing compensation the Tribunal erroneously deducted 1/3rd instead of 1/4th from the earnings of the deceased. When the number of dependants is '5', 1/4th is to be deducted as per the judgment of Apex Court reported in ***Smt.Sarla Verma vs. Delhi Transport Corporation***[1], he contended.

b) Secondly, he argued that the Tribunal awarded very low amount of Rs.4,450/- towards loss of consortium and as per the decision of Apex Court in ***Rajesh vs. Rajbir Singh***[2], Rs.1,00,000/- has to be awarded. As per the same decision, compensation for funeral expenses has to be awarded at Rs.25,000/- but the Tribunal awarded only Rs.2,000/-.

Learned counsel thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, while supporting the award learned counsel for respondent/ APSRTC argued that if ***Sarla Verma***'s case (1 supra) is followed 15 is to be taken as multiplier instead of 16. He further submitted that compensation awarded under different heads is just and reasonable and there is no need to revise the same.

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

"Whether compensation awarded by the Tribunal under different heads is just and reasonable or needs interference?"

8) **POINT**: Admittedly the deceased was the cleaner in APSRTC. The Tribunal while computing the compensation for loss of dependency, fixed his net salary as Rs.4,520/- basing on Ex.A.6—pay slip for the month of July, 2007. As rightly argued, the Tribunal did not take the future prospects into consideration but the claimants too did not adduce any evidence in that regard. Thus having regard to the nature of his job and present salary, a sum of Rs.480/- is added towards future prospects making his monthly earnings at Rs.5,000/-. Thus his annual income comes to Rs.60,000/- (Rs.5,000/- x 12).

a) The Tribunal deducted 1/3rd from the gross earnings towards personal expenditure of the deceased. In ***Sarla Verma***'s case (1 supra), the Apex Court held that where the number of dependant family members is 4 to 6, 1/4th has to be deducted. The deceased left behind his wife, two minor children and his old aged parents as his dependants. Therefore, 1/4th has to be deducted. Thus his net annual contribution comes to Rs.45,000/- (Rs.60,000/- x 3/4th). Then the Tribunal basing on the age of the deceased as 37 years, selected '16' as multiplier. However, as per ***Sarla Verma***'s case(1 supra), '15' is the appropriate multiplier and hence accepted. Thus the loss of dependency comes to **Rs.6,75,000/-** (Rs.45,000/- x 15).

b) Then the Tribunal awarded a meager amount of Rs.2,000/- towards funeral expenses and Rs.4,440/- towards loss of consortium. Following the decision of Apex Court in ***Rajesh***'s case(2 supra), funeral expenses is increased to **Rs.25,000/-** and also considering that the deceased died in his middle age, loss of consortium is enhanced to **Rs.15,000/-**.

Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency		Rs. 6,75,000-00
Loss of estate		Rs. 15,000-00
Funeral expenses		Rs. 25,000-00
Loss of consortium		Rs. 15,000-00
	Total	Rs. 7,30,000-00

Thus, compensation is enhanced by Rs.**1,30,000/-** (Rs.7,30,000/- minus Rs.6,00,000/-).

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

a) The compensation is enhanced by Rs.**1,30,000**/- with proportionate costs and simple interest @ 6% per annum from the date of OP till the date of realization.

b) The respondent is directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against it.

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

U. DURGA PRASAD RAO, J

Date: 27.10.2015
scs

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

[2] (2013) 9 SCC 54