HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
M.A.C.M.A. No.157 of 2009

JUDGMENT:

Aggrieved by the Award dated 22.10.2008 in M.V.O.P.No.330 of 2006 passed by the Chairman, MACT-cum-Principal District Judge, East Godavari District, Rajahmundry (for short "the Tribunal"), the claimants preferred the instant MACMA.

2 a) On factual side, on 27.02.2006 at about 11.00 pm, when the deceased—Bhogireddi Narasimha Satyanarayana Murthy who was working as Special Assistant, State Bank of India, Rajahmundry, was going on his scooter bearing No.ABP 9456, a lorry bearing No. TN 28 J 9978 proceeding from Lalacheruvu to Vemagiri being driven by its driver in a rash and negligent manner and high speed and at Morampudi junction it dashed the scooterist who received severe injuries and died on the spot. It is averred that the accident was occurred due to the fault of the driver of the offending lorry. On these pleas, the claimants filed M.V.O.P.No.330 of 2006 under Section 166 of Motor Vehicles Act,1988 (for short "MV Act") against respondents 1 and 2, who are the driver and owner and respondent No.3, who is the insurer of the offending lorry and claimed Rs.25,00,000/- as compensation.

b) Respondents 1 and 2 remained ex-parte.

c) Respondent No.3—Insurance Company filed counter and denied all the material averments made in the petition and contended that the accident was occurred due to the negligent driving by the deceased himself.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A9 were marked. Exs.B.1 and B.2 were marked on behalf of respondents.

e) Award shows regarding issue No.1, the Tribunal basing on the evidence of PW.2—eyewitness and Exs.A4—MVI report and A5—charge sheet, held that the driver of the lorry was responsible for the accident. Sofaras quantum of compensation is concerned, the Tribunal awarded Rs.12,71,425/- with proportionate costs and interest at 7.5% p.a from the date of O.P till realization under different heads as follows.

Loss of dependency	Rs.	12,38,425-00
Loss of consortium	Rs.	15,000-00
Lost of estate	Rs.	15,000-00
Transportation of dead body	Rs.	500-00
Funeral expenses	Rs.	2,500-00
Total	Rs.	12,71,425-00

Sofaras liability is concerned, the Tribunal fastened the liability on R2 and R3—owner and insurer of the lorry.

Hence the appeal by claimants.

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

4) Heard arguments of Sri Chandra Sekhar Ilapakurti, learned counsel for appellants/claimants and Sri Kota Subba Rao, learned counsel for R3/Insurance Company. Though notice to R2/owner was served but there is no representation on his behalf, hence treated as heard. R1/driver is not necessary party as per cause title.

5) The learned counsel for appellants challenged the Award mainly on two grounds; firstly that the Tribunal erred in accepting the multiplier at '6.31'. According to the learned counsel, having regard to the age of the deceased as 52 years, the Tribunal ought to have selected the multiplier following the multiplier table provided by the Hon'ble Apex Court in ***Smt.Sarla Varma vs. Delhi Transport Corporation***[1]***.***

b) Secondly he argued that the Tribunal awarded low amounts of Rs.2,500/- towards funeral expenses and Rs.15,000/- towards loss of consortium, but as per the decision of Apex Court in ***Rajesh and others vs. Rajbir Singh and Others***[2]***,*** the Tribunal ought to have awarded minimum of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. He, thus, prayed to allow the appeal.

6) *Per contra,* the learned counsel for insurance company, while supporting the Award, submitted that the

compensation awarded was just and reasonable and there is no need to review the same.

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

"*Whether the award passed by the Tribunal is just and reasonable or needs interference?*"

8) Admittedly, the deceased was working as Special Assistant in State Bank of India main branch, Rajahmundry, by the date of his death and as per the evidence of PW.3, his date of birth was 10.08.1953. So, by the date of his death, the deceased was 52 years old. For his age, no doubt, "11" is the multiplier in ***Sarla Varma's case.*** The Tribunal, however, fixed '6.31' as multiplier following the decision in **Bhagawan Das's** case. By the date of judgment of the Tribunal, the decision in **Sarla Varma's** case was not rendered by the Hon'ble Apex Court. In these circumstances, having regard to the fact that deceased would have retired on attaining superannuation after completing 60 years of the age and that he was still left with 8 years of service during which period only he would have earned salary, in my considered view, '8' can be taken as multiplier. So, the compensation for loss of dependency is re-assessed accordingly and it comes to Rs.15,70,112/- (2,94,396 x 2/3rd x 8).

9) Then compensation under other heads is concerned,

nodoubt, in **Rajesh's** case, the minimum compensation of Rs.1,00,000/- is fixed for loss of consortium. However, considering the fact that the deceased died not in the prime of his youth but at his middle age, the compensation for consortium is fixed at Rs.25,000/-. Then funeral expenses is concerned, the same is enhanced to Rs.25,000/-. Thus, a total compensation payable to the claimants is detailed as below:

Loss of dependency	Rs.	15,70,112-00
Loss of consortium	Rs.	25,000-00
Loss of estate	Rs.	15,000-00
Transportation of dead body	Rs.	500-00
Funeral expenses	Rs.	25,000-00
Total	Rs.	16,35,612-00

So, the compensation is enhanced by Rs.3,64,187/- (Rs.16,35,612 minus Rs.12,71,425).

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

a) Compensation is enhanced by Rs.3,64,187/- with proportionate costs and interest at 7.5% per annum from the date of OP till the date of realization.

b) 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.

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

U. DURGA PRASAD RAO, J

Date: 24.03.2015

Note: L.R. Copy to be marked: Yes / No

Murthy/eha

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[1] 2009 ACJ 1298 (SC)

[2] 2013 9 SCC 54