THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.1190 of 2009

JUDGMENT:

Aggrieved by the Award dated 12.12.2008 in O.P.No.528 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, Nizamabad (for short "Tribunal"), the claimants preferred the instant MACMA.

2 a) On factual side, on 07.01.2004 when the deceased—Kethavath Balsingh was travelling in auto bearing No.AP 25 U 6387 from Lingampet to Shetpally and when the it reached near sub-station, Lingampet village, the driver drove the same in a rash and negligent manner and at high speed and thereby the auto turned turtle. Due to which, the deceased received grievous injuries all over the body. Immediately he was admitted in Government Hospital, Kamareddy, from there he was referred to Gandhi Hospital, Secunderabad and thereafter shifted to Osmania General Hospital, Hyderabad where he took treatment as inpatient and discharged on 14.01.2004. Thereafter, the deceased continued follow up treatment under the private doctors and at last on 22.01.2004 he succumbed to injuries. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the crime auto. On these pleas, the claimants, who are the wife, children and mother filed O.P.No.528 of 2006 under Section 166 (1) (c) of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the crime auto and claimed Rs.10,00,000/- as compensation.

b) R1 remained *ex-parte*.

c) Respondent No.2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. R2 denied the age, avocation and income of the deceased. R2 contended that driver of the auto had no valid and effective driving licence at the time of accident. Finally, R.2 contended that the compensation claimed by the claimants was high and excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A8 were marked on behalf of claimants. Ex.B1—copy of insurance policy was marked on behalf of R2.

e) The Tribunal on appreciation of oral and documentary evidence, has awarded a sum of Rs.5,60,500/- with costs and interest @ 9% p.a. against the respondent Nos. 1 and 2 under different heads as follows:

Loss of dependency	Rs. 5,40,000-00
Loss of consortium	Rs. 15,000-00
For Transportation charges and funeral Charges	Rs. 5,000-00
Total	Rs. 5,60,000-00

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

4) Heard arguments of Sri Lakkadi Dayaker Reddy, learned counsel for appellants/claimants and Sri Sriman, learned counsel for R2/ Insurance Company. Though notice to R1/owner of the crime vehicle was served but there is no representation on his behalf, hence treated as heard.

5 a) Challenging the Award, learned counsel for appellants/claimants, firstly argued that the compensation awarded by the Tribunal was grossly low since the Tribunal failed to consider the evidence on record in a proper perspective. Expatiating the same, learned counsel submitted though there is a cogent oral and documentary evidence in the form of PW.3 and Exs. A.7 and A.8 showing that the deceased by attending agriculture and doing firewood business was earning Rs.15,000/- per month, the Tribunal disbelieved the same and took a paltry sum of Rs.4,500/- per month and thereby the compensation was drastically reduced.

b) Secondly, learned counsel argued that the Tribunal erred in deducting 1/3rd from the gross annual income of the deceased towards personal expenditure. As per the decision reported in ***Smt.Sarla Varma vs. Delhi Transport Corporation***[1]***,*** only 1/4th needs to be deducted since the number of dependants of the deceased are five.

c) Thirdly, learned counsel argued that the Tribunal awarded paltry sum of Rs.15,000/- towards loss of consortium. Whereas, the Hon'ble Apex Court in the judgment reported in ***Rajesh and others vs. Rajbir and others***[2]***,*** held that loss of consortium should be awarded Rs.1,00,000/-. Similarly, an amount of Rs.5,000/- was awarded as Transportation Charges and funeral expenses. But, in the aforesaid decision of ***Rajesh's*** *case (2 supra)*, the Hon'ble Apex Court also held that Rs.25,000/- should be awarded towards funeral expenses.

On all these arguments, learned counsel sought for enhancement of compensation.

6) Per contra, learned counsel for second respondent/ Insurance Company while supporting the Award argued that the compensation awarded by the Tribunal under different heads was just and reasonable and there is no need to re-assess the same. He would argue that the income of the deceased was concerned there was no proper evidence and except the oral evidence of PW.3 and Ex.A.8—Income Certificate, there is no other cogent evidence and the Tribunal rightly held that the Sarpanch is not competent to issue Income Certificates. He argued that compensation under other heads also was just and reasonable.

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

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

8 a) **<u>POINT</u>**: The accident, involvement of Auto and death of the deceased are admitted facts. The main issue in this appeal is only the

quantum of compensation.

b) As per the claimants, the deceased—Kethavath Balsingh is resident of Shetpally Thanda, Lingampet Mandal, Nizambad District and was aged about 40 years and by doing family agriculture as he and his wife were owing lands and by doing firewood business, he was earning Rs.15,000/- per month. In proof of his occupation and income, the claimants apart from his wife examined PW.3, who is Upa Sarpanch of Shetpally Village and also produced Exs. A.7 and A8—Copies of Pattadar Passbooks and Income Certificate respectively. PW.3 deposed that the deceased was aged 40 years old and owning Ac.7.00 of land and by doing firewood business and attending agriculture and by raising sugarcane, paddy, Turmeric, Chilli and other commercial crops with the help of bore well water, he was earning Rs.15,000/- per month. He avouched that the Sarpanch of the village issued Ex.A.8—Income Certificate. Then Ex.A.7—Copies of Pattadar Passbooks would show that the first petitioner and the deceased owns agricultural lands of about 5 Acres. This is the oral and documentary evidence relating to occupation and income of the deceased. The Tribunal did not believe the oral evidence of PW.3 and Ex.A.8—Income Certificate on the observation that as per G.O.Ms.No. 276, dt. 13.07.2002 of Panchayat Raj and Rural Development (MDL.II) Department, the Sarpanch is not competent to issue Income Certificates. Thus, the Tribunal considering Ex.A.7—Pattadar Passbook held that the deceased was owning agricultural lands and hence he was an agriculturist and notionally fixed his income as Rs.4,500/- per month. I see no fault of the Tribunal in such fixation. When the evidence of PW.3 and Ex.A.8 are omitted, what remains is Ex.A.7, which would show that the family of the deceased owns agricultural lands. Logically speaking on his death, the lands would remain intact and his family can attend the agriculture through the other members and get income. Of course, they would not have the advantage of personal cultivation and supervision by the deceased.

Therefore, even taking that aspect into consideration, fixing of Rs.4,500/- per month cannot be said to be very low one. However, what is to be added is the future prospects to the said income. Therefore, a sum of Rs.500/- is added towards future prospects. Thus, the monthly income of the deceased comes to Rs.5000/- (Rs.4500 + 500). The annual income of the deceased, which will serve as multiplicand, comes to Rs.60,000/- (Rs.5000 x 12). The tribunal deducted 1/3rd towards personal expenditure of the deceased. However, as rightly argued by the appellants, in the decision reported in ***Sarla Varma's*** case (1 supra), the Hon'ble Apex Court observed that 1/4th has to be deducted where the number of dependant family members is 4 to 6. In the instant case, the dependants of the deceased are five and hence, 1/4th is deducted from the gross annual income of the deceased. Thus, the net annual income comes to Rs.45,000/- (Rs.60000 x ¾).

9) Then selection of multiplier is concerned, the deceased, as per Ex.A.3—Inquest Report, was 45 years old and as per the multiplier table provided in ***Sarla Varma's*** case (1 supra), '14' is the correct multiplier for the said age group. So, the compensation for loss of dependency comes to Rs.**6,30,000/-** (Rs.45,000 x 14).

a) Then the Tribunal awarded Rs.15,000/- towards loss of consortium. It is seen that the deceased died in his middle age leaving some minor children and old aged mother and his wife. Considering the travails, the first petitioner has to bring up her children without the companion of the deceased, the compensation is enhanced to **Rs.25,000/-.** Similarly, considering the compensation for funeral expenses as low, the same is enhanced to **Rs.15,000**/-. Thus, the total compensation payable to the claimants under different heads is shown as below:

Loss of Dependency	Rs.6,30,000-00
Loss of Consortium	Rs. 25,000-00
Funeral Expenses	Rs. 15,000-00

Total Rs.**6,70,000-00**

So, at the outset, the compensation is enhanced to Rs.1,10,000/- (Rs.6,70,000/- minus Rs.5,60,000/-).

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

a) The compensation awarded by the Tribunal is increased by **Rs.1,10,000/-** with proportionate costs. The original compensation of Rs.5,60,000/- shall carry interest at 9% P.A., as awarded by the Tribunal and enhanced compensation of Rs.1,10,000/- shall carry interest at 7.5% p.a., 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: 16.07.2015
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[1] 2009 ACJ 1298 (SC)

[2] (2013) 9 SCC 54