

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.112 of 2010

JUDGMENT:

Challenging the Award dated 17.11.2008 in M.V.O.P.No.432 of 2007 passed by the Chairman, MACT-cum-Principal District Judge, Kadapa (for short “the Tribunal”), the 2nd respondent in the O.P/Oriental Insurance Company Limited preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) The first claimant is the wife, claimants 2 to 4 are children of the deceased—Gone Rangaswami Naidu. Their case is that on 28.07.2006 at about 11:00p.m when the deceased along with Subbarayudu and Venkata Subbaiah was returning to their village after effecting repairs to the tractor bearing No.AP 04 T 4019 at Proddatur and when they reached near Viswanathapuram on Myduku—Proddatur main road at about 12:30am, on the intervening night of 28/29.07.2007, the diesel was exhausted completely and the deceased stopped the tractor-cum-trailer on the extreme left side of the road margin and put on the indicator lights and sent Venkata Subbaiah to Mydukur to fetch oil and waiting by the side of tractor. At that time, one lorry bearing No.AP 02 U 9519 being driven by its driver at high speed and in a rash and negligent manner, rammed the tractor from behind and due to the impact, the tractor-trailer took 180 degrees turn and the deceased who stood

by the side of the vehicle died on the spot and Subba Rayudu sustained injuries. The claimants with the averments that the accident was occurred due to fault of the driver of the offending lorry and due to abrupt death of the deceased they lost their fender, filed MVOP No.432 of 2007 under Section 166 of Motor Vehicles Act,1988 against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.6,00,000/- as compensation.

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

c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. R.2 contended that the accident was occurred due to the negligence of the deceased himself as he parked the tractor without proper care and caution. Finally R.2 contended that the claim is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A.1 to A.12 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.6,00,000/- with costs and interest at 6% p.a under different heads as follows:

Loss of income and

future expectancy of life Rs.6,00,000-00

Funeral expenses	Rs. 2,000-00
Loss of estate	Rs. 15,000-00
Loss of consortium	Rs. 5,000-00

Total	Rs.6,22,000-00

As the claim is for Rs.6,00,000/-, the Tribunal restricted the compensation to Rs.6,00,000/- only.

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri R.Brizmohan Singh, learned counsel for appellant/Insurance Company and Sri D.Kodanda Rami Reddy, learned counsel for respondents 1 to 4/claimants. Though notice to R5/owner of the lorry was served but there is no representation on his behalf, hence treated as heard.

5) Learned counsel for appellant/Insurance Company challenged the award on two main grounds:

a) Firstly on the ground that the accident was occurred due to the fault of the deceased himself as he negligently parked the tractor-cum-trailer on the middle of the road in the night time without placing any guarding stones around the vehicle and also without putting on the indicator lights and further he stood on the middle of the road and therefore, the deceased himself was responsible for the accident. On this ground learned counsel sought to exonerate the owner and insurer of the offending lorry.

b) Secondly, criticizing the quantum of compensation as excessive, learned counsel argued that the Tribunal erroneously fixed the notional income of the deceased as Rs.5,000/- p.m without there being any cogent evidence in that regard and thereby compensation was unduly increased. Learned counsel submitted that the claimants have not produced any tangible evidence such as Gram Panchayat permission, account books etc., showing the income of the deceased and inspite of it, the Tribunal fixed his income on high side. He further argued that multiplier '15' selected by the Tribunal is also on high side. He at the first instance prayed to exonerate the owner and insurer of the lorry and alternatively sought to reduce the compensation.

6 a) In oppugnation, learned counsel for respondents 1 to 4/claimants while supporting the award firstly argued that the deceased parked the tractor-cum-trailer on the extreme left side of the road by switching on the parking lights and he also stood on the road margin which is evident from the deposition of PW.2 and as such the argument of the appellant is not correct. He contended that the owner and insurer have not examined the lorry driver to establish his innocence if any.

b) Secondly, regarding quantum of compensation, learned counsel argued that in fact the compensation awarded by the Tribunal was on lower side since the Tribunal failed to take into consideration the future prospects of the deceased for fixing his income and thereby compensation was drastically reduced. Further, the Tribunal awarded low amount towards funeral

expenses, loss of estate and loss of consortium and as per the decision of Apex Court reported in the case of ***Rajesh and others vs. Rajbir Singh and others***^[1], the claimants are entitled to much higher compensation under those heads. He argued that though the claimants have not filed independent appeal or cross objections to claim enhanced compensation, still they can defend the compensation awarded by the Tribunal on the ground that it is a low amount. He thus prayed not to revise the compensation to the disadvantage of the claimants.

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

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT**: The first argument of the appellant is concerned, it is the case of claimants that when the deceased was returning on his tractor-cum-trailer along with P.W.3 and Bathula Subba Rayudu on the night of 28.07.2006, the diesel was exhausted when they reached Viswanathapuram and so the deceased stopped his tractor-cum-trailer on the extreme left side margin of the road by switching on the parking lights and he sent PW.3 for fetching oil and stood on the margin of the road by the side of the vehicle waiting for the arrival of PW.3. Subba Rayudu was sleeping in the trailer. At that time, it is alleged, the offending lorry came from Proddatur side being driven by its driver in a rash and negligent manner and at high speed and dashed behind the

trailer and due to the impact of hit, the tractor-trailer took 180 degrees turn and the deceased who stood by the side of the vehicle died on the spot and Subba Rayudu sustained injuries. It is the case of claimants that the lorry driver was totally responsible for the accident. PW.2 who is said to be an eye witness, was examined to prove the manner of occurrence of accident. He deposed that he is a resident of Viswanathapuram village and on the night of 28.07.2006 in the midnight he woke up to attend calls of nature and he came out of the house and while he was attending calls of nature he noticed the tractor-cum-trailer stationed on the left side of the road i.e, on the northern side of the road and at that time the offending lorry came from Proddatur side being driven by its driver in a rash and negligent manner and dashed against the stationed tractor and on seeing it he rushed to the spot and noticed that the Engine of the tractor was completely turned to the opposite direction and one person died near the Engine and another person who was in the trailer sustained grievous injuries and the lorry ran into the fields and driver absconded. PW.2 thus asserted that the accident was occurred due to the sole negligence of the lorry driver. He was cross-examined at length but nothing specific could be extracted to impeach his evidence. PW.2 is an independent witness and I see no reason for him to speak falsehood against the lorry driver. It is true that in the cross-examination he stated that police officers have not examined him. From this mere stray sentence, it cannot be held that he was not an eye witness to the accident. In the charge-sheet he was shown as LW.3 and

referred as eye witness. Thus his evidence clearly shows that the lorry driver drove the vehicle in a rash and negligent manner and dashed the stationed tractor-cum-trailer. Apart from the evidence of PW.2, the police too after investigation filed charge-sheet against the lorry driver holding him responsible for the accident. Thus the oral and documentary evidence establishes the guilt of the lorry driver. As rightly argued by the claimants, the owner and insurer of the offending lorry have not examined the lorry driver to prove his innocence if any. So for all these reasons, the argument of the appellant that the deceased himself was responsible for the accident cannot be accepted.

9) The second argument of the appellant is concerned, the oral and documentary evidence produced by the claimants would show that the deceased was a reputed Repairer of Electrical Submersible Motors in his area and he was a trainer also. Having regard to the nature of his occupation, the Tribunal has conservatively fixed his notional income as Rs.5,000/- p.m and I see no exaggeration in it. Further, having regard to his age as 40 years, the Tribunal rightly selected '15' as multiplier. It should be noted that even according to the multiplier table provided by Hon'ble Apex Court in the case of **Smt.Sarla Verma vs. Delhi Transport Corporation**^[2], '15' is the multiplier for the persons in the age group of 36 to 40 years. Therefore, compensation awarded by the Tribunal under different heads cannot be said to be on high side. So at the outset, I do not find any merits in this appeal.

10) In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.432 of 2007. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: .01.2015

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

SCS

[\[1\]](#) 2013 ACJ 1403 (SC)

[\[2\]](#) 2009 ACJ 1298 (SC)