THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.Nos.1139 of 2009 and 441 of 2013

COMMON JUDGMENT:

Aggrieved by the Award dated 17.08.2005 in O.P.No.2008 of 2002 passed by the Chairman, MACT–cum–District Judge, Nizamabad (for short 'the Tribunal'), both claimants and Insurance Company preferred M.A.C.M.A.No.1139 of 2009 and M.A.C.M.A. No.441 of 2013 respectively.

2) The factual matrix of the case is thus:

a) The first claimant is the wife and second claimant is the mother of deceased—Byagari Laxmaiah. Their case is that on 10.03.2002, the deceased was travelling in lorry bearing No.AP 23 V 234 as labourer from Sangareddy to Hyderabad and when the said lorry reached Widia Company on N.H-7 at about 6:15am, the driver of the lorry drove the same at high speed and in a rash and negligent manner and lost control over the lorry and thereby the lorry turned turtle. In the resultant accident, the deceased and Gaddam Abraham died on the spot and other persons sustained multiple fractures and grievous injuries. It is averred that the lorry driver was responsible for the accident. On these averments, the claimants filed O.P.No.2008 of 2002 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.12,00,000/- as compensation.

b) R.1 remained *ex parte*.

c) R.2/Insurance Company filed counter and opposed the claim petition denying the material allegations and urged to put the claimants in strict proof of the same. R2 denied the age, avocation and income of the deceased. R.2 disowned its liability on the ground that at the time of accident, the deceased along with others travelled in the lorry as fare paid labour contractor which is against the M.V. Rules and policy conditions. R.2 denied that the R.1 is the registered owner of the lorry at the time of accident. It contended that there is no fault on the part of driver of the lorry and he had no valid and effective driving licence at the time of accident. It further contended that compensation claimed is excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,25,000/- with costs and interest at 9% p.a. against respondent Nos.1 and 2 as follows:

Loss of dependency	Rs.4,08,000-00
Loss of consortium	Rs. 15,000-00
Funeral expenses	Rs. 2,000-00

Total: Rs.4,25,000-00

Hence the appeals: 1)MACMA No.1139 of 2009 by the claimants and 2) MACMA No.441 of 2013 by Insurance Company.

3) The parties in both the appeals are referred as they were arrayed before the Lower Tribunal.

4 a) **<u>M.A.C.M.A. No.1139 of 2009</u>**: Heard arguments of Sri Venkateshwar Varnasi, learned counsel for appellants/claimants and Sri B.Devanand, learned counsel for respondent No.2/Insurance Company. Respondent No.1 is not necessary party vide cause title.

b) **<u>M.A.C.M.A No.441 of 2013</u>**: Heard arguments of Sri N.Mohan Krishna, learned counsel for appellant/Insurance Company and

Sri Venkateshwar Varnasi, learned counsel for respondents 1 and 2/ claimants. Respondent No.1 is not necessary party vide cause title.

5 a) In M.A.C.M.A.No.1139 of 2009 filed by the claimants, criticizing the quantum of compensation as low, learned counsel for appellants/claimants firstly argued that the deceased apart from working as contract coolie was also doing multiple works such as doing cultivation in 4 Acres of land and also doing contract works by supplying construction material and his monthly income from all the sources was about Rs.20,000/- but the lower Tribunal without having regard

to the same and also without appreciating Ex.A.7—income certificate issued by M.R.O, erroneously fixed his notional income as Rs.3,000/-p.m and computed compensation and thereby the compensation was drastically plummeted. He submitted that the Tribunal has not taken into consideration the future prospects of the deceased and thereby also the compensation was reduced.

b) Secondly, he argued that the Tribunal applied a low multiplier taking the age of the deceased as 32 years. He pointed out that the age of the second claimant who is the mother of the deceased was 42 years by the date of death of deceased and in that view, the deceased cannot be said to be 32 years old. He submitted that the deceased must have been in the age group of 20 to 25 years by the time of his death and thereby '18' should be taken as multiplier.

c) Thirdly, he contended that the Tribunal awarded low compensation for funeral expenses and loss of consortium. Referring the decision of Hon'ble Apex Court in ***Rajesh vs. Rajbir Singh and others***[1]***,*** he submitted that the first claimant is entitled to Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. He thus prayed to allow MACMA No.1139 of 2009 filed by the claimants and dismiss the counter appeal—MACMA No.441 of 2013 filed by the Insurance Company.

6) Both the learned counsel for Insurance Company in

MACMA No.1139 of 2009 and MACMA No.441 of 2013, challenging the compensation under the head loss of dependency as exorbitant, argued that the Tribunal erred in fixing '17' as multiplier but as per the multiplier table provided by Hon'ble Apex Court in the decision reported in ***Sarla Verma vs. Delhi Transport Corporation***[2], '16' is the appropriate multiplier for the persons in the age group of 32. Sofaras the income of the deceased is concerned, learned counsel argued that the Tribunal rightly rejected Ex.A.7 and notionally fixed the income of the deceased as Rs.3,000/- p.m and there is no need to review the same. Thus they prayed to reassess the compensation for loss of dependency and allow the appeal filed by the Insurance Company and dismiss the appeal filed by the claimants.

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

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

8) **POINT**: It must be noted that both the appeals are filed by either party challenging the quantum of compensation alone and hence it has to be seen whether the compensation awarded is just and reasonable or not. Sofaras the income of the deceased is concerned, though claimants pleaded in the O.P and PW.1 deposed in her evidence that the deceased was doing multiple works such as attending agriculture in 4 to 5 Acres of land and also doing contract works in supply of

construction material besides attending coolie works and earning about Rs.20,000/- p.m, they did not produce any cogent evidence in this regard. They only produced Ex.A.7—annual income certificate said to be issued by M.R.O, Nagireddypet. No doubt in Ex.A.7 it is mentioned as if the annual income of the deceased was Rs.1,30,000/- which was derived by him by doing agriculture in 1 Acre of wet land in Sy.Nos.39/28, 13/3 and also doing sand contract. Except filing this certificate, the claimants have not examined any concerned authority in proof of the said document. The Tribunal rightly observed that it is not known as to on what basis the M.R.O issued Ex.A.7—income certificate for Rs.1,30,000/- and at the most he was competent to issue income certificate on agricultural income. In Ex.A.7 there were no particulars about the nature of the alleged sand contract and no licence number or other particulars were mentioned. Similarly agricultural income is concerned, there was no evidence that the deceased was cultivating 4 Acres of land belonging to others. No lease deed or other document was filed in proof of the same. Therefore, considering the young age of the deceased and also his attending coolie work which was mentioned in FIR and Charge Sheet, the Tribunal notionally fixed his monthly income as Rs.3,000/- on the premise that he would earn atleast Rs.100/- per day. I see no reason to differ with the same. However, it must be noted that the Tribunal failed to take into consideration the future prospects of the deceased. As per the decision of Hon'ble

Apex Court in ***Santosh Devi vs. National Insurance Company Ltd. and others***[3], future prospects have to be taken into consideration for the persons in unorganized sector. Therefore, a sum of Rs.500/- is added towards future prospects. Thus the monthly income of the deceased comes to Rs.3,500/-.

a) The Tribunal selected ‘17’ as multiplier taking the age of the deceased as 32 years which was mentioned in Ex.A.3—post-mortem report. Both parties challenged the selection of multiplier. Learned counsel for claimants argued that since the mother of the deceased was aged 42 years, the age of the deceased cannot be 32 years and it should be between 20 to 25 years and therefore, the Tribunal ought to have taken ‘18’ as multiplier. On the other hand, learned counsel for Insurance Company argued that the deceased was 32 years old and as per the decision in ***Sarla Verma***’s case (2 supra), ‘16’ is the correct multiplier. The contention of the learned counsel for claimants cannot be accepted. It is true that in claim petition, the age of 2nd claimant is mentioned as 42 years but there is no proof for such age. On the other hand, the post-mortem doctor mentioned the age of the deceased as 32 years in Ex.A.3 basing on the medical examination. Therefore, the Tribunal rightly accepted the age of the deceased as 32 years. In ***Sarla Verma***’s case (2 supra), ‘16’ is provided as multiplier for the persons in the age group of 31 to 35 years. So instead of ‘17’, ‘16’ has to be accepted as multiplier. Thus the loss of dependency comes to **Rs.4,48,000/-** (Rs.3500/- x 12 x 2/3 x 16).

10) Sofaras compensation under other heads is concerned, the first claimant lost her husband at the prime of her youth, that too within six months after her marriage with him. Having regard to it and considering the decision in ***Rajesh***'s case (1 supra), compensation for loss of consortium is increased to Rs.30,000/-. Similarly, the funeral expenditure is also increased to Rs.10,000/-, considering that the amount of Rs.2,000/- awarded by the lower Tribunal was a low amount. Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs.4,48,000-00
Loss of consortium	Rs. 30,000-00
Funeral expenses	Rs. 10,000-00
Total:	Rs.4,88,000-00

Thus, the compensation is enhanced by Rs.63,000/- (Rs.4,88,000/- minus Rs.4,25,000/-).

10) Thus, the two appeals are disposed of and ordered as follows:

i) M.A.C.M.A. No.441 of 2013 filed by Insurance Company is dismissed and

ii) M.A.C.M.A. No.1139 of 2009 filed by claimants is partly allowed and the compensation is enhanced by **Rs.63,000/-** (Rs.4,88,000/- minus Rs.4,25,000/-).

iii) The enhanced compensation amount of **Rs.63,000/-**

shall carry interest @ 7.5% p.a from the date of O.P. till the date of realization. Whereas the original compensation of Rs.4,25,000/- shall carry interest @ 9% p.a throughout.

iv) Respondent Nos.1 and 2 in the O.P. are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

v) No costs in both the appeals.

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

U. DURGA PRASAD RAO, J

Date: 18.12.2015
scs

[1] 2013 ACJ 1403 SC

[2] 2009 ACJ 1298 (SC)

[3] AIR 2012 Supreme Court 2185