THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1310 of 2010

JUDGMENT:

Aggrieved by the Award dated 28.11.2008 in OP No.354 of 2007 passed by the Chairman, M.A.C.T-cum- District Judge, Nizamabad (for short "the Tribunal"), the 2nd respondent/Insurance Company preferred the instant appeal.

2) The factual matrix of the case is thus:

On 03-01-2007 when the deceased-Kotha Raju was driving the TVS Super XL Moped bearing No. AP 25 C 7567 to go to Kamareddy and when he reached near Kamareddy Vagu Bridge, Kamareddy at about 3.00 PM, a lorry bearing No. CG 04/DA 3565 being driven by its driver in a rash and negligent manner dashed against the deceased causing instantaneous death. It is averred that lorry driver was responsible for the accident and due to the sudden demise of deceased, the claimants became destitutes. On these averments, the claimants, who are wife, children and parents of the deceased, filed O.P.No.354 of 2007 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 lorry and claimed Rs.11,00,000/- as compensation under different heads mentioned in OP.

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

c) Respondent No.2/Insurance Company denied all material averments and urged to put the claimants in strict proof of the same. It contended that there is no negligence on the part of the driver of the lorry and the deceased himself drove the vehicle in a rash and negligent manner and caused the accident. R.2 further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

e) During trial, PWs.1 and 2 were examined and Exs.A1 to A10 were marked on behalf of the claimants. No oral or documentary evidence was adduced on behalf of respondents.

f) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.7,40,000/- with costs and interest at 9% p.a under different heads as follows:

Loss of dependency Rs.7,20,000-00

Loss of consortium Rs. 15,000-00

Transportation charges and

Funeral expenses Rs. 5,000-00

Total Rs.7,40,000-00

Hence, the appeal by the Insurance Company.

3) Heard arguments of Sri N. Mohan Krishna, learned counsel for appellant/Insurance Company and Sri Ch. Srinivasa Murthy, learned counsel for respondents/claimants. Notice on R6 was returned unserved.

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

5 a) Learned counsel for appellant/Insurance Company, while assailing only the quantum of compensation, has firstly argued that the Tribunal erroneously fixed the monthly income of the deceased on high side at Rs.5,000/- though there is no proof regarding the income of the deceased on his hotel business. He submitted that the Tribunal at best should have fixed Rs.3000/- per month as his income.

b) Secondly, he argued that as per the judgment of the Apex Court in ***Sarla Verma V. Delhi Transport Corporation***, the appropriate multiplier for the persons in the age group of 26-30 years like deceased is ‘17’, but the Tribunal erroneously took ‘18’ as multiplier and thereby compensation was unduly escalated. Finally, he argued that the Tribunal wrongly awarded interest at 9% p.a., but the appropriate rate of interest is 7.5%. He, thus, prayed to allow the appeal and re-asses the compensation.

6) Per contra, learned counsel for respondents/claimants argued that what was awarded by the Tribunal was itself a low amount inasmuch as the Tribunal in fact took low income of Rs.5000/- per month inspite of cogent evidence in the form of EXs. A.9 and 10 showing that the deceased was running hotel-cum-kirana business by obtaining license from Gram Panchayat and earning Rs.10,000/- per month. He argued that the Tribunal did not add future prospectus to his income and thereby, compensation for loss of dependency was drastically reduced. He further argued that the Tribunal granted only a paultry sum of Rs.15,000/- for loss of consortium, whereas as per the judgment of the Apex Court in ***Rajesh and others V. Rajbir Singh and Others*****,** a sum of Rs.1,00,000/- towards loss of consortium and Rs.25,000/- for funeral expenses are to be awarded. Learned counsel further argued that claimants Nos. 2 and 3 are tender aged children of the deceased and they lost love, care and guidance of their father, but the Tribunal has not awarded any compensation in that regard. In view of all the aforesaid short comings, he argued, compensation was already diminished and hence, there is no need to revise the same. He also submitted that the rate of interest granted by the lower Tribunal is an appropriate one and there is no need to revise the same. He, thus, prayed to dismiss the appeal.

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

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

8) **POINT:** Accident, involvement of lorry bearing No. CG 04 DA 3565 and the death of deceased are admitted facts. The bone of contention is only the quantum of compensation. A perusal of Ex.A.1

—FIR, Ex.A.2—Inquest Report, Ex.A.9—Certificate issued by Village Secretary and Ex.A.10—Tax Receipts all cumulatively show that the deceased –Kotha Raju was aged about 26 years and prior to accident, he was doing Hotel-cum-Kirana business in his village. Regarding the nature of his avocation there is abundant evidence, but with regard to his earnings though the petitioners claimed that he was earning Rs.7000/- per month, there is no satisfactory evidence. Hence, the Tribunal considering his young age and avocation, notionally fixed his monthly income as Rs.5000/-. I find no exorbitance in such fixation. Thus, his gross annual income is Rs.60,000/- (5000 x 12). After deducting 1/3rd towards his personal expenses, his net annual contribution comes to Rs.40,000/-.

9 a) Then multiplier is concerned, the Tribunal following II Schedule of M.V.Act, selected '18' as multiplier. No doubt, in ***Sarla Verma*'s** (1 supra) case, the Hon'ble Apex Court fixed '17' as multiplier for the persons in the age group of 26-30 years. However, it must be noted that the impugned judgment was passed by the Tribunal on 28.11.2008, whereas, the judgment in ***Sarla Verma*'s** case (1 supra) was rendered by the Apex Court subsequently on 15.04.2009. Hence, there was no occasion for the Tribunal to consider the said Judgment. No doubt, the appeal is a continuation of the proceedings in the trial Court and hence subsequent changes in the law can be taken into consideration in suitable cases. However, having regard to the fact that the difference in multiplier is only one digit, I am not inclined to lower the multiplier to the disadvantage of the claimants, who are all dependents on the earnings of the deceased. Thus, the compensation for loss of dependency comes to Rs. 7,20,000/- (Rs.40,000 x 18). Therefore, the Tribunal was right in arriving at the above figure.

b) Then the Tribunal awarded Rs.15,000/- towards loss of consortium and Rs.5000/- towards Transport Charges and funeral expenses, which were criticised by the learned counsel for respondents/claimants as low amount. However, since the claimants have not filed any independent appeal or cross objections challenging the adequacy of compensation, they are not entitled to seek for enhancement of compensation in this appeal, which is filed by the Insurance Company. They are only entitled to defend the compensation awarded by the Tribunal as laid down by the Hon'ble Apex Court in ***Ranjana Prakash and others vs. Divisional Manager and another***.

10) Then coming to the rate of interest, the Tribunal awarded 9% p.a., from the date of OP till the date of realisation, which in my considered view, is on high side and therefore, the interest is reduced to 7.5% p.a. through out.

11) In the result, the MACMA filed by the Insurance Company is partly allowed inasmuch as while upholding the compensation awarded by the Tribunal, the rate of interest is reduced from 9% to 7.5% per annum through out.

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

U. DURGA PRASAD RAO, J

Date: 12.10.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

<u>M.A.C.M.A. No.1310 of 2010</u>

Dt. 12.10.2015

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