THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.637 of 2009

JUDGMENT:

Aggrieved by the Award dated 17.06.2005 in M.V.O.P.No. 1932 of 2001 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, Nizamabad (for short "the Tribunal"), 2nd respondent/ New India Assurance Company Limited Insurance Company preferred the instant MACMA.

2) The claimants in the OP are the respondents 1 to 7 in the appeal. The respondent No.1 in the OP is the respondent No.8 in the appeal.

a) On factual side, on 11.11.2001 the deceased by name Rafeeq Khan was driving the Lorry bearing No. MH 26 B 7421 from Nizamabad towards Bodhan side and on the way when the lorry reached Autonagar in the Shivar of Bodhan Village at about 12.55 AM, another lorry bearing No. ADT 5999 being driven by its driver in a rash and negligent manner and at high speed dashed against the lorry of the deceased. In the resultant accident, the deceased succumbed to injuries and died on the spot. It is averred that the accident was occurred due to rash and negligent by the driver of lorry bearing No. ADT 5999. On these pleases, the claimants, who are the wife and children of deceased, filed M.V.O.P.No.1932 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short “MV Act”) against respondent Nos.1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.8,00,000/- as compensation.

b) Respondent No. 1 filed counter and opposed the claim denying all the material averments made in the petition. It is submitted that the deceased parked the lorry on wrong side of the road in careless manner and as such the deceased contributed for the accident and that the lorry bearing No.ADT 5999 was insured with respondent No.2 and the policy was in force and hence he is not liable to pay the compensation to the claimants.

c) R.2/Insurance Company filed Counter and contended that drivers of both the vehicles do not have valid driving licence and further both the drivers contributed for the accident and as such at the first instance, second respondent is not liable for the claim and even if it is held R2 is also liable, compensation has to be awarded against both the vehicles.

d) During trial, Pws.1 to 3 were examined and Exs.A.1 to A.6 were marked on behalf of claimants. None were examined on behalf of respondents, but Policy copy was marked as Ex.B.1 on behalf of second respondent.

e) The Tribunal on appreciation of oral and documentary evidence has awarded a sum of Rs.6,35,000/- with interest at 9% p.a directing the respondent No.2/insurer to deposit the amount along with interest thereon with costs under different heads as follows:

Loss of dependency	Rs.6,12,000/-
Loss of consortium	Rs. 20,000/-
Transport Charges	Rs. 500/-
Funeral Charges	Rs. 2,500/-
Total	Rs.6,35,000/-

Hence the appeal by Insurance Company.

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

4) Heard arguments of Sri T.Ramulu, learned counsel for Appellant/Insurance Company, Sri P.Radhive Reddy, learned counsel for respondents 1 to 7 and Sri V.Tulasi Reddy, learned counsel for respondent No. 8.

5 a) Challenging the quantum of compensation, learned counsel for appellant/Insurance Company mainly argued that the Tribunal accepted '17' as multiplier but as per the multiplier table provided by the Apex Court in ***Smt.Sarla Varma vs. Delhi Transport Corporation***[1], '16' is correct multiplier and hence, the said multiplier may be applied and compensation may be re-assessed. He further submitted that the Tribunal without any basis accepted the notional income of the deceased as Rs.4.500/- per

month. The same is also required to be reduced.

b) Secondly, he argued the Tribunal awarded interest @ 9% p.a. which is on high side and hence the said rate of interest may be reduced suitably. He thus prayed to allow the appeal.

6) Per contra, opposing the appeal, learned counsel for respondents 1 to 7/claimants submitted that compensation awarded by the Tribunal under different heads is just and reasonable and the same may not be revised. He argued that the Tribunal has not considered future prospectus of deceased. Added to it, owing to the fact that deceased left seven dependants of whom six are minor children, Tribunal ought to have deducted $1/5^{th}$ instead of $1/3^{rd}$ from the gross earnings of the deceased towards his personal expenditure. He submitted that though the claimants have not preferred any independent appeal or cross-objections, still they can defend the compensation awarded by the Tribunal on the ground that due to certain wrong calculations, what was awarded by the Tribunal itself was a low amount.

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) **<u>POINT</u>**: Accident, involvement of two lorries and death of the deceased are not in dispute. The bone contention in the appeal is quantum of compensation. The award

shows that the Tribunal having considered that deceased was a lorry driver and in fact he died while driving one of the two lorries involved in the accident, notionally assessed his income at Rs.4,500/- per month. It arrived his gross annual income as Rs.54,000/- and deducted $1/3^{rd}$ towards his personal or living expenditure. Then, having regard to his age of 32 years, the Tribunal selected '17' as multiplier following Second Schedule of Motor Vehicles Act. Thus, the Tribunal arrived at the loss of dependency as Rs.6,12,000/-.

a) Now, the first argument of appellant/Insurance Company is that as per ***Sarla Varma*** table the correct multiplier is '16' but not '17' for the persons in the age group of 31 to 35 years and hence the said multiplier has to be applied. There is no denial of this fact, but considering the fact that the difference in the multiplier is only one digit and deceased left behind six minor children to be maintained by his hapless wife, I am not inclined to decrease the multiplier to the disadvantage of the claimants.

b) Then the next argument of the appellant is that the Tribunal took high notional income of Rs.4,500/- per month. I find no teeth in the argument. Considering that the deceased was a young lorry driver, Tribunal fixed his notional income as Rs.4,500/- per month and I find no excessiveness in it. In fact the Tribunal has not considered the future prospects of deceased. Therefore, the notional income can only be said to be moderate one. Thus, at the outset, the compensation awarded by the Tribunal under different heads is just and reasonable and it does not require any re-assessment.

c) However, considering the fact that interest at 9% per annum awarded by the Tribunal is slightly on high side, the same is reduced to 7.5% per annum.

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

a) While upholding the compensation awarded by the Tribunal, the rate of interest is reduced from 9% to 7.5% p.a. from the date of O.P. till the date of realisation.
b) The appellant/Insurance Company is directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against it.

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

U.DURGA PRASAD RAO, J.

Dt. 20.01.2015

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

Murthy

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[1] 2009 ACJ 1298 (SC)