IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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MACMA No.183 of 2009 and Cross objections (SR) No.18935/2009

MACMA No.183 of 2009:

Between:
The New India Assurance Co. Ltd
Rep. by its Sr. Divisional Manager,
Kurnool. .... Appellant

AND

Smt. S. Aruna @ Arunamma
and another. .... Respondents

Cross objections (SR) No.18935 of 2009:

Between:
Smt. S.Aruna @ Arunamma
and others. .... Appellants

And

The New India Assurance Co. Ltd,
Rep. by its Sr. Divisional Manager, Kurnool
and another. .... Respondents

DATE OF JUDGMENT PRONOUNCED: **27.07.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment?

   Yes / No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.183 of 2009
and
Cross-Objections (Sr)No.18935 of 2009

COMMON JUDGMENT:

Both the New Indian Assurance Company Limited and the claimants have challenged the Award dated 02.09.2008 in O.P.No.388 of 2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Mahabubnagar (for short 'the Tribunal'), the former in the form of instant appeal and the latter in the form of cross-objections.

2) The factual matrix of the case is thus:

a) On 22-05-2006 at about 16.30 hours the deceased—S. Goverdhan Reddy was coming from Housing Board Colony, Nagarkurnool to R.T. C Bus Stand and when he reached near J.F.C.M Court, Nagarkurnool, a lorry bearing No. AP 24 V 6717 being driven by its driver in a rash and negligent manner dashed the deceased from back side. In the resultant accident, the deceased sustained severe injuries and died while shifting to O.G.H Hyderabad. It is averred that the driver of the lorry bearing No. AP 24 V 6717 was responsible for the accident. It is also averred that due to abrupt death of deceased, the claimants lost their breadwinner and became destitutes. On these averments, the claimants, who are wife and children of deceased, filed O.P.No.388 of 2006 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 respectively and claimed Rs.18,00,000/- as compensation under different heads mentioned in OP.

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

c) Respondent No.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. It denied that the respondent No.1 is the registered owner of the vehicle and he transferred the offending vehicle in favour of one Syed Osman on 07.09.2004 and obtained policy on 09.09.2004, as such, it is not liable to pay the compensation to the claimants. It further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A15 were marked on behalf of claimants. Policy copy filed by respondent No.2 was marked as Ex. B.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.9,50,000/- with costs and interest at 7.5% p.a. against respondent Nos.1 and 2.

Hence, the appeal by the New India Assurance Company Limited.

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

4) Heard arguments of Smt A. Jayanthi, learned counsel for appellant/ Insurance Company; Sri K. Venkatesh Gupta, learned counsel for respondent Nos.1 to 3/claimants—Cross objectors and the Notice sent to R.4/owner of the offending vehicle was not yet returned.

5 a) Criticizing the Award, the learned counsel for appellant/Insurance company argued that in computing the compensation, the Tribunal committed grave error in accepting the agricultural income of the deceased at Rs.30,000/- and thereby compensation was highly escalated. She argued that even after the death of the deceased, the lands remained intact and there is no loss of agricultural income and his family members might suffered only personal supervision of the deceased and so they have to incur the supervisory charges by engaging a coolie and the supervisory charges will not be equivalent to Rs.30,000/-. Learned counsel argued that since the deceased was a teacher, it was highly doubtful whether he was looking after the family agriculture. In view of all these, the Tribunal ought to have

taken a nominal amount towards supervisory charges and added to the income of the deceased to compensate the loss, but the Tribunal took a high amount of Rs.30,000/-.

b) Nextly she argued that the Tribunal erred in granting interest at 7.5% and it ought to have granted 6% per annum.

6 a) Per contra, learned counsel for respondents/claimants referring their cross objections argued that the Tribunal in fact awarded a very low compensation, which necessitated the claimants to file the cross objections. In expatiation, he firstly argued that the deceased was a teacher and aged about 46 years by the time of his death and still he was left with 12 or 13 years of service and he would have become a School Assistant as spoken by PW.3 and having regard to these facts, the Tribunal ought to have added reasonable amount towards future prospects of the deceased, but it did not do so.

b) Secondly, learned counsel argued that the deceased was having around Ac.10.00 of land and earning Rs.1,00,000/- per annum as agricultural income, but the Tribunal took only Rs.30,000/- and due to this, the compensation for loss of dependency was drastically decreased.

c) Thirdly, learned counsel argued that the Tribunal took a low multiplier and as per the decision of the Hon'ble Apex Court reported in ***Smt. Sarla Varma vs. Delhi Transport Corporation***[1]***,*** the correct multiplier is '13".

d) Fourthly, he argued that the Tribunal awarded a low amount towards loss of consortium and it did not award any amount towards funeral expenses.

He, thus, prayed to allow the cross objections while dismissing the appeal.

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 re-assessment?"

8) **POINT**: The accident, involvement of Lorry bearing No. AP 24 V 6717 and the death of the deceased are admitted facts. It is also an admitted fact that the deceased was aged about 46 years and was working as a teacher in P.S. Primary School, Gaggalapally, Mahaboob Nagar, District. Now coming to computation of compensation, the Tribunal having regard to Ex.A.7—Salary Certificate fixed his annual salary at Rs.1,09,332/-. Then regarding agricultural income, considering Ex.A.10 to A.12 –Pahanis and Ex.A.13—Pattadar Passbook, the Tribunal agreed that the deceased was having around Ac.9.31 guntas of land and raising commercial crops like Cotton, Maize etc., and fixed his agricultural income as Rs.30,000/- and took the total annual income as Rs.1,39,332 (Rs.1,09,332/- Plus Rs.30,000/-). Then it selected the multiplier '9.93' and arrived at the loss of dependency at Rs.9,22,378/-. The aforesaid compensation is criticized by both sides--- the claimants on the arguments that the Tribunal has not taken into consideration the future prospectus of the

deceased and the Insurance Company on the argument that the agricultural income of the deceased was highly placed.

9) Upon hearing both sides, I find no much force in the contention of the Insurance Company. EX.A.13—Pattadar Passbook shows that the deceased was owning about AC.9.28 guntas of land, whereas Exs. A.10 to A.12 show that he was raising commercial crops like Chilli, Cotton and Maize etc.,. It is true that even after his death, the lands remained intact , but his family might suffered certain extent of agricultural income due to lack of personal supervision by the deceased and his family members might have also required to engage the services of an agricultural labourer for looking after their lands. So, the probable loss of agricultural income and additional expenditure towards supervisory charges shall alone have to be taken into consideration for computing the compensation for loss of dependency. The Tribunal has taken the agricultural income of the deceased as Rs.30,000/- as stated above. In this regard, the contention of the Insurance company to the effect that the supervisory charges and loss of agricultural income put together cannot be equated to Rs.30,000/- as taken by the Tribunal, cannot be accepted. The lands owned by the deceased are vast extent of about 9.28 guntas. So, the loss of agricultural income due to his death and the supervisory charges to be incurred for engaging an agricultural coolie for such vast extent put together will certainly come to Rs.30,000/-. So in that manner, an additional amount of Rs.30,000/- has to be added to the salary income of the deceased.

10. Then the contention of the respondents/claimants is that the Tribunal failed to take the future prospectus of the deceased into consideration. There is some force in this argument. As per Ex.A.14, the date of birth of deceased was 25-03-1960 and so he was aged 46 years old by the time of his death. Admittedly, he was a teacher and still he was left with 12 years of service. Hence, there is a probability of increase in his salary by a minimum of Rs.1200/- per year (an annual increment of Rs.100/-) during his remaining service period. Hence, his future prospectus can be taken as Rs.1200/- per annum. Thus, the annual income of the deceased comes to Rs. (1,09,332 + 30,000 + 1200) = 1,40,532, which is rounded off to Rs.1,40,500/-.

11. Then the multiplier is concerned, the Tribunal selected "9.93" and in my view it is a low multiplier. Admittedly, the deceased was still left with 12 years of service and so, '12' is accepted as multiplier. Thus, the loss of dependency comes to Rs.11,24,000/-(1,40,500 X 12 X 1/3).

12. Next argument of claimants is that the Tribunal awarded a low amount of Rs.15,000/- towards loss of consortium. Having regard to the fact that the deceased died in his middle age, but not in the prime of his youth, the claimants deserve only marginal increase in loss of consortium. Accordingly, the said compensation is enhanced to Rs.20,000/-. Since the Tribunal did not award any amount towards funeral expenses, a sum of Rs.10,000/- is awarded

towards funeral expenses. Thus, the total compensation payable to the claimants is as follows:

Loss of dependency	Rs.	11,24,000/-
Loss of consortium	Rs.	20,000/-
Funeral expenses	Rs.	10,000/-
Loss of love and affection	Rs.	12,622/-
Total	Rs.	11,66,662/-

So at the outset, the compensation is enhanced by Rs.**2,16,662**/- (Rs.11,66,662 minus Rs.9,50,000/-).

13) Then the contention of appellant/Insurance company that the interest awarded by the Tribunal is on high side cannot be accepted because the Tribunal rightly awarded 7.5% P.A., which is a prevailing bank rate.

14) In the result, Appeal and Cross Objections are disposed of and ordered as follows:

1. MACMA No.183 of 2009 filed by the Insurance Company is dismissed.
2. Cross Objections (SR) No.18935 of 2009 filed by the claimants are allowed and compensation is enhanced by Rs.**2,16,662**/- with proportionate costs and interest @ 7.5% per annum from the date of OP till realization against the respondent Nos. 1 and 2.
3. The respondents 1 and 2 in the OP 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: 27.07.2015
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[1] 2009 ACJ 1298 (SC)