THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.2596 of 2009

JUDGMENT:

Dissatisfied with the Award dt:09.03.2009 in M.V.O.P.No.159 of 2007 passed by the Chairman, MACT-cum-Principal District Judge, Kadapa (for short "the Tribunal), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 06-12-2006 while the deceased—Karna Raja Kullai Reddy was proceeding on motorcycle along with his cousin—Vijaya Bhaskar Reddy to Thathireddypalli village to distribute the wedding cards of his marriage and when they reached near Varada Raja Swamy Temple on Thathireddypalli Main Road, one jeep bearing No. AP 04 8859 being driven by its driver in a rash and negligent manner, came and dashed them from behind. In the resultant accident, the deceased received multiple injuries and thereafter, he was shifted to Government Hospital, Pulivendla, where the doctors declared him as brought dead. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the jeep and due to abrupt death of deceased, the claimants, who are the parents of the deceased, became destitutes. With these averments, the claimants filed O.P.No.159 of 2007 under Sec.166 of Motor Vehicles Act, 1988 (for short "M.V.Act") against respondent Nos.1 and 2, who are owner and insurer of the Jeep, and claimed Rs.10,00,000/- as compensation.

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

c) Respondent No.2/Insurance Company opposed the claim denying all the material averments made in the claim petition and urged to put the claimants in strict proof of the same. Finally, it contended that the claim is highly excessive and exorbitant and prayed for dismissal of the OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 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, awarded a sum of Rs.3,77,000/- with proportionate costs and interest at 6% p.a. against respondent Nos. 1 and 2 under different heads as follows:

Loss of income and future Expectancy of life	Rs.3,60,000-00
Loss of Estate	Rs. 15,000-00
Funeral Expenses	Rs. 2,000-00
Total	Rs.3,77,000-00

Hence the appeal.

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

4. Heard arguments of Sri D.Kodanda Rami Reddy, learned counsel for Appellants/claimants and Sri V. Venkata Rami Reddy, learned counsel for respondent No.2. Though Notice to R.1 was served but there is no representation on his behalf, hence treated as heard.

5 a) Challenging the Award, learned counsel for appellants firstly argued that the Tribunal grossly erred in taking the monthly income of the deceased as Rs.6000/- though the claimants produced Ex.A.5 and A.6 showing that the deceased was working as constable in Border Security Force and earning Rs.8000/-. Learned Counsel vehemently argued that the Tribunal ought to have taken the monthly income of the deceased as Rs.8000/- instead of notional income of Rs.6000/- and thereby the compensation is drastically reduced.

b) Secondly, learned counsel argued that the Tribunal committed grave error in deducting 2/3rd from the annual income of the deceased towards his personal and living expenditure. Citing the decision reported in

Smt.Sarla Varma vs. Delhi Transport Corporation*[1]*, learned counsel argued that at-best the Tribunal ought to have deducted 50% of his earnings towards his personal and living expenditure as laid down in the said decision, but not 2/3rd and thereby also, the compensation was drastically plummeted.

c) Thirdly, learned counsel argued that the Tribunal has not taken into consideration the future prospects of the deceased. As he was an young man of about 28 years old and having bright future prospects, the Tribunal ought to have granted a reasonable amount towards his future prospects.

d) Fourthly, learned counsel argued that the Tribunal awarded a very low amount of Rs.2000/- towards funeral expenses. As per the latest law, the Tribunal ought to have awarded a reasonable amount towards funeral expenses.

Learned counsel thus, prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, opposing the appeal, learned counsel for second respondent/Insurance Company argued that the compensation awarded by the Tribunal was just and reasonable and there is no need to reassess the same. Learned counsel argued that though the claimants pleaded that the deceased was working as Constable in Border Security Force and produced Exs.A.5 and A.6—certificates, they did not examine any connected officials to prove those documents and therefore, there was no proof regarding the employment of the deceased. Inspite of the same, the Tribunal fixed a reasonable amount of Rs.6,000/- as the monthly income of the deceased and computed the compensation and therefore, there was no fault in the assessment of the compensation and he thus, prayed to dismiss 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 interference?"

8) **POINT**: The accident, involvement of Jeep and motor cycle and death of the deceased are not in dispute. The bone of contention is only the quantum of compensation. Sofaras the employment and income of the deceased are concerned, the claimants produced Exs.A.5 and 6. Ex.A.5 is purportedly the Office Order dated 04.01.2007 passed by the Commandant, 1st BH BSF, Praharinagar District, West Garo Hills (Meghalaya). In this Order, while referring the deceased as a Constable in BSF, a condolence message was conveyed to the bereaved family of deceased by the Commandant. Ex.A.6 is concerned, it is the policy amount paid by the LIC on the death of the deceased. The claimants though examined PW.2, who accompanied the deceased at the time of accident, did not examine any concerned officials in proof of Exs.A.5 and A.6 as contended by learned counsel for 2nd respondent/Insurance Company. However, since in EX.A.2—Inquest Report, the deceased was referred as an army man and as the Ex.A.2 was prepared within short period after accident, it can be believed that the deceased was working as Constable in BSF as depicted in Ex.A.5.

9) Then coming to the salary of the deceased, Exs.A.5 and A.6 do not show about his salary particulars. The claimants have not produced any other records. Therefore, in my considered view, the Tribunal, basing on the nature of his employment and age, has rightly taken Rs.6000/- as the monthly income of the deceased. Since there is no cogent record regarding the income of the deceased and his future prospects, it shall be deemed that the said amount of Rs.6000/- includes his future prospectus also.

10) Sofaras deduction is concerned, it must be said that the Tribunal committed a grave error in deducting 2/3rd. As per the decision reported

in ***Sarla Varma***'s case (1 supra), the Hon'ble Apex Court held that where the deceased was a bachelor, normally a deduction equivalent to 50% has to be made towards his personal and living expenses. But, the Tribunal deducted 2/3rd, which cannot be countenanced. Therefore, the compensation needs to be re-assessed suitably. Thus, the compensation for loss of dependency comes to Rs.5,40,000/- (Rs.6000 x 12 x 15 x 50%).

11) Sofaras the funeral expenses are concerned, going by the dictum of the Hon'ble Apex Court in the decision reported in ***Rajesh and others vs. Rajbir Singh and others***[2], funeral expenses are increased from Rs.2,000/- to Rs.25,000/-. Thus, the total compensation payable to the claimants under different heads is shown as below:

Loss of Dependency	Rs.5,40,000-00
Funeral Expenses	Rs. 25,000-00
Loss of estate	Rs. 15,000-00
Total	Rs.5,80,000-00

Therefore, the compensation is enhanced to Rs.2,03,000/- (Rs.5,80,000/- minus Rs.3,77,000/-).

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

a) The compensation awarded by the Tribunal is increased by **Rs.2,03,000/-** with proportionate costs and interest at 6% p.a. from the date of OP till the date of realization.

b) Respondents 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: 15.07.2015

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

<u>M.A.C.M.A. No.2596 of 2009</u>

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Dt. 15.07.2015

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[1] 2009 ACJ 1298 (SC)

[2] (2013) 9 SCC 54