THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.320 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.1894 of 2003 dated 31.03.2008 by the Chairman, I Additional M.A.C.T, Nizamabad (for short “the Tribunal”), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants are the children of deceased—Smt.Sahazadi Begum. Their case is that on 22.01.2003 at about 11:00 am, when the deceased was going by walk from Khaleelwadi to Phulong street in Nizamabad town and when she reached in front of Old Eye Hospital of Krishna Murthy, Nizamabad, one Kinetic Challenger Motorcycle bearing No.AP 25 G 2384 being driven by its driver at high speed and in a rash and negligent manner, dashed the deceased. In the resultant accident, the deceased sustained severe head injury and she succumbed to injuries on 14.03.2003 while undergoing treatment at Gandhi Hospital, Hyderabad. It is averred the accident was occurred due to rash and negligent driving by the driver of motorcycle. On these pleas, the claimants filed O.P.No.1894 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) claiming compensation of Rs.6,00,000/-.

b) Respondent Nos.1 and 2 filed separate counters and denied all the material averments made in the petition and urged to put the claimants in strict proof of the same. They further denied the age, avocation and income of the deceased. They contended that the driver of the motorcycle had no valid and subsisting driving licence to drive the motorcycle. Thus it is prayed that the compensation claimed is excessive and exorbitant and OP is liable for dismissal.

c) During trial, PW.1 was examined and Exs.A1 to A7 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex.B.1.

d) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,21,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of dependency Rs. 3,84,000-00

Funeral expenses Rs. 2,000-00

Transportation and treatment Rs. 15,000-00

Loss of love and affection Rs. 20,000-00

Total Rs. 4,21,000-00

Hence, the appeal by the claimants.

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

4) Heard arguments of Sri M.Rajamalla Reddy, learned counsel for appellants/claimants. Notice sent to R.1 was served. Sri K.Kishore Kumar Reddy, learned counsel filed Vakalat for R.2/Insurance Company. Though case was adjourned several times for hearing arguments on behalf of respondents but there was no representation, hence treated as heard.

5) The compensation awarded was impugned by the learned counsel for appellants/claimants mainly on the submission that though the evidence was adduced by the claimants to the effect that the deceased was eking out livelihood by vending fruits and earning Rs.10,000/- p.m, the Tribunal took a low amount of Rs.3,000/- p.m. Further, the Tribunal has not taken the future prospects of the deceased into consideration, due to which, the compensation was drastically reduced. He thus prayed that compensation may be reassessed.

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

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

7) **<u>POINT:</u>** Upon hearing the above arguments and on perusal of the record, this Court is of the view that compensation for loss of dependency needs reassessment. It is the case of claimants that the deceased by vending fruits earning Rs.10,000/- p.m. However, since except the oral assertion of PW.1—the daughter of deceased, there was no other cogent evidence, the Tribunal fixed the monthly earnings of the deceased as Rs.3,000/- @ Rs.100/- per day. To this extent, the Tribunal was correct. However, as rightly argued by learned counsel for claimants, the Tribunal has not considered the future prospects of the deceased. Therefore, a sum of Rs.500/- is added towards future prospects. Thus the annual income of the deceased which will serve the purpose as multiplicand comes to Rs.42,000/- (Rs.3,500/- x 12). From this, 1/3rd is deducted towards the personal expenditure of the deceased and the balance amount of Rs.28,000/- is multiplied with the multiplier ‘16’. Thus the loss of dependency comes to Rs.4,48,000/- (Rs.28,000/- x 16). Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency Rs. 4,48,000-00

Funeral expenses Rs. 2,000-00

Transportation and treatment Rs. 15,000-00

Loss of love and affection Rs. 20,000-00

Total Rs. 4,85,000-00

So, the compensation is enhanced by Rs.64,000/- (Rs.4,85,000 minus Rs.4,21,000).

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

a. Compensation is enhanced by Rs.**64,000**/- with proportionate costs and interest at 7.5% per annum from the date of OP till the date of realization; and

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: 07.04.2015

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