

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

**MACMA No.563 of 2010
and
Cross Objections (SR) No.18542 of 2010**

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Common Judgment:

Aggrieved by the Award dated 23.02.2008 in O.P.No.1827 of 2006 passed by the Chairman, MACT-cum-III Additional Metropolitan Sessions Judge, Hyderabad (for short “the Tribunal”), the 2nd respondent in OP/New India Assurance Company Limited Insurance Company preferred the instant MACMA.

2) The 2nd respondent in the O.P. is the appellant herein. The claimants in the OP are the respondents 1 and 2 in the appeal. The respondent No.1 in the OP is respondent No.3 in the appeal.

a) On factual side, on 04.12.2002 the deceased —Kum.A.Sirisha who was a first year Engineering student of Gokaraju Ranga Raju Institute of Engineering & Techno College, Bachipally, while trying to board the college bus bearing No.AP 28U 6571 at the college premises, the driver moved the bus in a rash and negligent manner and at high speed due to which she fell down and the left front wheel of the bus ran over her head causing her instantaneous death. It is averred that the accident was

occurred due to rash and negligent driving of the bus driver. On these pleas, the claimants, who are the parents of deceased, filed O.P.No.1827 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 crime vehicle and claimed Rs.5,00,000/- as compensation.

b) R1/owner filed counter and denied all the material averments made in the petition and urged to put the petitioners to strict proof of the same. R1 contended that deceased tried to board the moving bus and fell down and therefore there is no negligence on the part of driver of the bus. R1 further contended that the offending bus was insured with R2/Insurance Company and hence R2 may be directed to pay the compensation, R1 already paid a sum of Rs.3,00,000/- as exgratia. R1 further contended that claim is highly excessive and exorbitant.

c) R2/Insurance Company filed counter and opposed the claim. It is contended that accident was occurred only due to negligence of the deceased while boarding the bus and the deceased was only a student and had no income, the claim is excessive and exorbitant and thus prayed to dismiss the petition.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of claimants. RW1

was examined and Exs.B1 and B2 were marked on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence awarded a sum of Rs.4,39,000/- with proportionate costs and interest at 7.5% p.a. against respondents 1 and 2 under different heads as follows:

Loss of Dependency	
Rs.3,84,000-00	
Loss of love and affection	Rs.
50,000-00	
Funeral expenses	Rs.
2,500-00	
Charges for transportation of dead body	Rs.
2,500-00	

	Total
Rs.4,39,000-00	

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 Ravi Shanakar Jandhyala, learned counsel for Appellant/Insurance Company, Sri C.Vikram Chandra, learned counsel for respondents 1 and 2/claimants and Sri Md.Abdul Khader, learned counsel for R3/ College.

5a) Challenging the award learned counsel for appellant/Insurance Company firstly argued that accident was occurred due to the fault of deceased herself as she carelessly tried to board the moving bus and fell down and hence the Tribunal ought to have dismissed the OP. Even otherwise, driver was not at fault because there was mechanical defect in the vehicle.

b) Secondly, he argued that Tribunal while computing the compensation for loss of dependency, fixed a high amount of Rs.6,000/- per month as income of the deceased forgetting the fact that deceased was only a student and not an earning member. The Tribunal in fact ought to have fixed notional income of the deceased at Rs.15,000/- per annum following the Second Schedule of the M.V.Act or following the decision of the Apex Court in ***Radhakrishna vs. Gokul***^[1] ought to have fixed the notional income of the deceased as Rs.42,000/- p.a.

c) Thirdly, he argued that deceased was a spinster and as such by following the decision of the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***^[2] the Tribunal ought to have deducted 50% from the notional income of the deceased towards her personal and living expenses but Tribunal erroneously deducted 1/3rd and thereby compensation was unduly escalated.

d) Fourthly, he argued that Tribunal erroneously selected '16' as multiplier basing on the age of the deceased instead of the age of her parents. Thus, at the first instance he prayed for dismissal of claim petition and alternatively for re-assessment of compensation.

6 a) Per contra, while opposing the award, learned counsel for respondents/claimants firstly argued that accident was occurred due to the rash and negligent driving of the driver himself as he started the vehicle without noticing that the students were boarding the bus and respondents in the OP have not adduced any evidence to prove his innocence and therefore, appellant/Insurance Company now cannot plead about the innocence of the driver.

b) Secondly, regarding quantum of compensation, learned counsel argued that Tribunal though correctly arrived at the amount of Rs.7,68,000/- as loss of dependency, however committed grave error in deducting half of the said amount i.e. Rs.3,84,000/- on the premise that after marriage of the deceased the claimants cannot claim any dependency on her. He argued that there is no hard and fast rule that after marriage an earning daughter will not pay amount to the parents for their maintenance. By this unreasonable deduction compensation was drastically reduced.

c) Thirdly, he argued that the deceased was an engineering student and she would easily earn Rs.6,000/- per month as fixed by the Tribunal which in fact a moderate fixation and hence the appellant cannot claim any arbitrariness in it.

d) Fourthly, he argued that the Tribunal rightly chose the age of the deceased for selection of multiplier and in fact the Division Bench of this High Court approved the same in a decision reported in ***N. Surender Rao and others vs. B. Swamy and another***^[3].

e) Finally, he submitted that he filed MACMA MP No.1113 of 2014 for permission to amend the claim to Rs.7,68,000/- and the same was approved and he also filed Cross-objections(Sr)No.18542 of 2010 seeking enhancement of compensation awarded by the Tribunal and the same may be considered.

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

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT**: Accident, involvement of bus bearing No. No.AP 28U 6571 and death of the deceased are not in dispute. The deceased— Kum.A.Sirisha, aged 19 years

was studying I year Engineering in Gokaraju Ranga Raju Institute of Engineering & Techno College, Bachipally, Miyapur.

a) As per claimants, on the evening of 04.12.2002 at about 5 PM when the deceased was boarding the college bus to go to home, the driver moved the bus in a rash and negligent manner and at high speed and thereby the deceased fell down and the left wheel of the bus ran over on her head causing instantaneous death. PW2 who witnessed the accident deposed the said fact stating that while he was coming out from Administrative Section of college to take his vehicle, he noticed the driver of the college bus moved the same while some students were still boarding and in that process the deceased who was trying to board the bus fell under the left wheel and died on the spot and the accident was occurred due to the rash and negligent driving on the part of driver of the bus. PW2 was an independent witness and as such his evidence can be believed. As rightly argued, the respondents in OP have not examined the driver of the bus to prove his innocence, if any. Therefore, Tribunal rightly held that bus driver was responsible for the accident. It is true that in Ex.A3—MVI report it was mentioned that there was damage to Air Tank Valvo kit and consequential failure of air system. However, as rightly observed by the Tribunal, accident was not occurred suddenly while the bus was in

its journey but accident was occurred only when the bus just started from the college premises. When the driver made ready the bus without checking the condition of the bus, he must be blamed for his carelessness and negligence in his duty. So, in any event the fault lies with driver only. Therefore, the first argument of the appellant cannot be accepted.

b) Then computation of compensation is concerned, the Tribunal fixed the notional income of the deceased at Rs.6,000/- p.m. and deducted 1/3rd towards her personal expenses and multiplied the balance amount with multiplier '16' selected basing on the age of the deceased and thus arrived at Rs.7,68,000/-. However, Tribunal deducted half of the amount on the premise that deceased being the daughter, will leave her parents after marriage and live with her husband in which case the claimants cannot depend on her after her marriage. The reasoning given by the Tribunal cannot found fault with having regard to the customs and usages prevailing in our society. Unlike sons, daughters after marriage will generally belong to the family of her husband and if she is an employee she will utilise all her income for her own family i.e. husband and children etc. It is only in rare and exceptional cases, the daughter even after marriage will spend her earnings for her parents. Hence, though there is no law on this aspect, going by the practice in vogue in

society, the Tribunal determined the loss of dependency and confined it upto the marriage of the deceased. Hence, the said act of the Tribunal cannot be impugned.

9) Then further arguments of appellant are concerned, it is true that in the cited decision in **Radhakrishna's** case (1 supra) the Apex Court in similar circumstances fixed notional income of the deceased at Rs.42,000/- per annum. It is also true that in **Sarla Verma's** case (2 supra) the Apex Court held that in case of bachelor 50% has to be deducted from his notional earnings. However, in view of the fact that the Tribunal already deducted half of the amount on the premise as narrated supra, I deem it not apposite to further reduce the compensation to the disadvantage of the claimants. The selection of multiplier is concerned, as rightly argued by learned counsel for respondents/claimants in **N.Surender Rao's** case(3 supra) a Division Bench of our High Court held that the age of the deceased rather than parents shall be taken for selection of multiplier. In view of the same, the contra argument of the appellant cannot be accepted. So, at the outset, the compensation awarded by the Tribunal is held to be just and reasonable in all respects and there is no need to interfere with it in whatever manner.

10) In the result, the MACMA filed by the appellant/Insurance Company and Cross-Objections filed

by the claimants are dismissed by confirming the award passed by the Tribunal. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 09.02.2015

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

Murthy

[\[1\]](#) 2013 ACJ 2860 (SC)

[\[2\]](#) 2009 ACJ 1298 (SC)

[\[3\]](#) 2014(1) ALT 512