HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1097 of 2010

JUDGMENT:

Aggrieved by the Award dated 19.06.2009 in M.V.O.P.No.204 of 2007 passed by the MACT-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), the 2nd respondent/Oriental Insurance Company Limited preferred the instant MACMA.

2 a) On factual side, on 15.05.2005 when the deceased—Shaik Shabber Basha @ Shaik Shabber Hussain along with his friend—Baba was proceeding on his motorcycle and when they reached near Mylavaram canal between Yerraguntla and Proddatur main road, a mini lorry bearing No.AP 04 U 7295 being driven by its driver in a rash and negligent manner and at high speed came in the opposite direction and dashed the motorcycle. Due to which the deceased and his friend received grievous injuries and deceased died on the spot. It is pleaded that accident was occurred due to fault of mini lorry driver. On these pleas claimants, who are the parents of the deceased, filed MVOP No.204 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of offending lorry and claimed Rs.15 lakhs as compensation.

b) R1 remained ex parte.

c) R2/Insurance Company opposed the claim denying all the material averments in the petition. It contended that accident was occurred due to the fault of driver of motorcycle but not due to the fault of the lorry driver. It also contended that claim is highly excessive and untenable.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal on appreciation of evidence on record has awarded total compensation of Rs.7,97,000/- against respondents 1 and 2 under different heads as follows:

Loss of dependency		Rs. 7,80,,000-00
Loss of estate		Rs. 15,000-00
Funeral expenses		Rs. 2,000-00
	Total	Rs. 7,97,000-00

Hence the appeal by the Insurance Company.

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

4) Heard arguments of Sri C.Narender Reddy, learned counsel for appellant/ Insurance Company and Sri D.Kodanda Rami Reddy, learned counsel for respondent Nos.1 and 2/claimants. Though notice to R3/ owner of lorry was served but there is no representation on his behalf, hence treated as heard.

5a) Fulminating the award, learned counsel for appellant/Insurance company vehemently argued that compensation awarded under different heads is highly excessive and without any evidentiary basis. Expatiating it, learned counsel firstly argued that there is no evidence to the effect that deceased was working as Computer Operator in M/s.Allawadhi Company, Kuwait and earning monthly salary of 140 Kuwait Dinars equivalent to Rs.25,000/- in Indian currency. Despite it, the Tribunal on assumption fixed his monthly salary at high amount of Rs.15,000/- and computed compensation for loss of dependency and thereby compensation was drastically escalated. Since there is no evidence, the Tribunal ought to have considered the deceased as a non-earning person and ought to have fixed his annual income at Rs.15,000/- following the Second Schedule of MV Act.

b) Secondly, he argued that Tribunal erred in accepting '13' as multiplier by taking the age of the mother (PW1) as 45 years without there being any cogent evidence in respect of her age. Due to this also compensation for loss of dependency was highly escalated. He thus prayed to allow the appeal and re-assess the compensation.

6) Per contra, learned counsel for respondents 1 and 2/claimants argued that in fact the compensation awarded by the Tribunal was much low and does not commensurate with qualification and earnings of the deceased and as the claimants could not prefer appeal due to their poverty, they are not able to seek enhancement of compensation in this appeal but still they are entitled to defend the compensation awarded by the Tribunal showing that what was awarded is a low amount.

a) In his attempt to establish that compensation awarded is substantially low amount, learned counsel firstly argued that though claimants could not produce the certificate issued by M/s.Allawadhi Company which is a Foreign Company, still they could produce Ex.A6—Computer Diploma Certificate and Ex.A8—Air ticket of the deceased showing that he was returning from Kuwait to Chennai and rightly believing these documents the Tribunal accepted that he was not merely a labourer in Kuwait but a Computer Technician. To that extent the Tribunal was right but it fixed a grossly low amount of Rs.15,000/- per month as his income instead of accepting the claim of the claimants that he was earning Rs.25,00/- per month.

b) Secondly, he argued the Tribunal deducted a high fraction of 2/3rd from the earnings of the deceased towards his personal expenditure instead of conventional fraction of 1/3rd and thereby also the compensation was drastically reduced.

c) Thirdly, he argued the Tribunal erred in selecting the multiplier basing on the age of the parents instead of the age of the deceased. Citing the decision of a Division Bench of this High Court reported in ***N.Surender Rao vs. B.Swamy***[1] he argued that in case of death of a bachelor, his age is relevant for selection of multiplier but not the age of his parents.

d) Fourthly, he argued that Tribunal awarded a low amount of Rs.2,000/- towards funeral expenses and as per the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and***

Others[2] it ought to have granted Rs.25,000/- in that regard. He thus argued that all the above reasons accounted for decrease of compensation and therefore, there is no need to re-assess and further reduce the compensation. He thus prayed to dismiss the appeal.

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

"Whether the compensation awarded by the Tribunal is just and reasonable or on high side warranting interference?"

8 a) **POINT**: Accident, involvement of mini lorry bearing No. AP 04 U 7295 and death of the deceased are not in dispute. The bone of contention is only the quantum of compensation. The main plank of argument of the Insurance Company is that without there being any cogent evidence with regard to employment of the deceased in Kuwait, the Tribunal considered him to be working as Computer Operator and earning Rs.15,000/- per month which is bereft of logic and evidence. In the light of above argument, this Court perused the record. The case of claimants is that their son— Shaik Shabber Basha was 30 years old and diploma holder in Computer Applications and was working as Computer Operator in M/s.Allawadhi Company at Kuwait and earning 140 Kuwait Dinars equivalent to Rs.25,000/- in Indian currency. He came to India for contacting his marriage alliance and died in the motor accident. The claimants have not produced the certificate of employment such as appointment order, pay slip etc. issued by M/s.Allawadhi Company. Hence, the point is

whether the claim regarding employment of the deceased can be believed. In this context, in Ex.A2—inquest report which was prepared within a short time after the death of the deceased the employment of the deceased is mentioned as Computer Operator in M/s.Alwadi Company, Kuwait. Since the inquest report is the earlier document generated after the death of the deceased, we cannot attribute any thoughtful manipulations regarding the particulars of the deceased mentioned therein. Hence, in the considered view of this Court, the employment of the deceased can be believed despite the claimants failed to produce the employment certificate issued by M/s.Allawadhi Company which is a Foreign Company. Not only inquest report, there is other supporting evidence also establishing his employment. As rightly observed by the Tribunal, Ex.A6 is the certificate issued by Global Tech. Computer Education, Kadapa showing that deceased was a diploma holder in Computer Applications. Ex.A7 is the Passport of the deceased and Ex.A8 is the Air ticket showing that the deceased travelled from Kuwait to Chennai. All these documents which are not disputed by the appellant/Insurance Company would support the claim of the claimants that the deceased was working in Kuwait. Therefore, the Tribunal rightly accepted his employment.

b) Sofaras the income of the deceased is concerned, the Tribunal considering his technical qualification took a modest amount of Rs.15,000/- per month and it is not an exorbitant figure considering that he was working in an oil rich country.

c) Then, the Tribunal deducted 2/3rd towards personal expenditure of the deceased instead of 1/3rd. Even as per the latest judgment of the Apex Court reported in ***Smt. Sarla Varma vs. Delhi Transport Corporation***[3], in case of bachelor not more than 50% of his earnings have to be deducted towards personal and living expenditure. Going by the latest dictum of the Apex Court, deduction of 2/3rd is on high side to the disadvantage of the claimants. Similarly, as per the latest Division Bench judgment of this High Court in ***N.Surender Rao***'s case (1 supra) the age of the deceased bachelor has to be taken for selection of multiplier but not his parents. In this case, the Tribunal took the age of mother for selection of multiplier and thereby the value of multiplier is decreased.

d) Then, coming to compensation under other heads, though an amount of Rs.15,000/- towards loss of estate is proper one, but compensation of Rs.2,000/- towards funeral expenses is grossly a low amount.

9) For the above reasons, as rightly argued by the claimants, the compensation was already reduced to a moderate level. Since the claimants have not preferred an independent appeal or cross-objections, the claim may not be enhanced, but basing on the dictum laid down by the Apex Court in ***Ranjana Prakash and others vs. Divisional Manager and another***[4], the claimants are entitled to defend the compensation awarded by the Tribunal on the argument that what was awarded was a low amount.

10) In view of the above discussion, I find no reason to interfere with the compensation awarded by the Tribunal. In the result, this MACMA is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.204 of 2007. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 26.03.2015

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

Murthy

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[1] 2014 (1) ALT 512 (DB)

[2] 2013 9 SCC 54

[3] 2009 ACJ 1298 (SC)

[4] 2011 ACJ 2418 (SC)