THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1163 of 2010

JUDGMENT:

Aggrieved by the Award dated 10.03.2010 in O.P.No.301 of 2007 passed by the Chairman, M.A.C.T-cum-XX Additional Chief Judge, City Criminal Court at Hyderabad (for short “Tribunal”), the claimants preferred the instant MACMA.

2 a) On factual side, on 04.08.2007 at about 11.40 am the deceased —K.Bhargavi while proceeding to her house from the school and reached near Rustapur Z.P.H.S School, a lorry bearing No.MPO 9HF 2496, which was driven by its driver in a rash and negligent manner and at high speed dashed the deceased girl. Due to which, she received multiple injuries and thereafter she was shifted to Government Hospital, Bhongir, where she succumbed to injuries. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the crime vehicle. On these pleas, the claimants, who are father and mother respectively, filed O.P.No.301 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 the crime vehicle and claimed Rs.2,50,000/- as compensation.

b) R1 remained *ex-parte*.

c) Respondent No.2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. R2 denied the age, avocation, health condition of the deceased at the time of accident. Finally, R.2 contended that the compensation claimed by the petitioners was high and excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. Ex.B1—copy of insurance policy was marked on behalf of R2.

e) The Tribunal on appreciation of oral and documentary evidence has awarded a sum of Rs.51,500/- with costs and interest at 7% p.a.

against the respondent Nos. 1 and 2.

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

4) Heard arguments of Sri Vikram Chandra, learned counsel for appellants/claimants and Sri S. Mujib Kumar, learned counsel for R2/ Insurance Company. Though notice to R1/owner of the crime vehicle was served but there is no representation on his behalf, hence treated as heard.

5) Challenging the quantum of compensation awarded as too low, learned counsel for claimants/appellants argued that as per the latest judgment of the Hon'ble Apex Court, the claimants are entitled to more compensation. He relied upon a decision reported in ***Kishan Gopal and another v. Lala and others*** and prayed to re-assess the compensation.

6) Per contra, the learned counsel for respondent No.2/Insurance Company argued that the compensation awarded was just and reasonable and there is no need to review the same.

7) 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 intervention?*

8) **POINT:** The deceased—K. Bhargavi was said to be 7 years old and studying 2nd class in Z.P.H.S School, Rustapur by the date of accident. It is true that the claimants have not filed any school record, but in Ex.A.1—FIR and Ex.A.4—Inquest report, this fact was clearly mentioned. In fact, the accident was occurred when she was returning from her school. Since these documents were generated within short time after the accident, it cannot be said that they were manipulated relating to the age and educational qualification of the deceased. Hence, the inference is that the deceased was 7 years girl and studying 2nd class on the date of untimely death.

9) Compensation is concerned, the Tribunal relying upon the judgment of the Apex Court reported in ***Oriental Insurance***

Company Limited v. Syed Ibrahim and others, granted a lump sum of Rs.51,500/-. It must be said that though Tribunal may not be found fault for following the said decision, still, pending appeal, the Hon'ble Apex Court has given rulings relating to the method of awarding compensation in child death cases and hence they have to be perused. One of such judgments is of course relied upon by the claimants/appellants in ***Kishan Gopal*'s** case(1 supra). This judgment relates to the assessment of compensation in respect of the death of 10 years old boy, who was supporting his father in agricultural operations. Since factually that case differs from the case on hand, the same cannot be followed. Then we have another latest judgment of the Hon'ble Apex Court reported in ***Puttamma and others v. K.L.Narayana Reddy and another*.** In this decision, the Hon'ble Apex Court has divided the children into two categories i.e., the children upto the age of 5 years and the children above the age of 5 years and given the method of calculating compensation. The Hon'ble Apex Court in that case while expressing its anguish over Central Government's not amending the Second Schedule of MV Act in view of Section 163-A (3) observed thus:

> *"Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that the children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988."*

10) In the light of above decision, compensation has to be assessed following Second Schedule to know whether the same is below or above the minimum limit prescribed in ***Puttamma***'s case (3 supra). Since the girl was 7 years old, a suitable multiplier has to be selected. The Apex Court in the case of ***Reshma Kumari and others v. Madan Mohan and another*** held as follows:

> *"In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in **Sarla Verma vs. Delhi Transport Corporation** {(2009)6 SCC 121} should be followed."*

Hence, following the above decision, multiplier '15' and notional income of Rs.15,000/- per annum are to be taken into consideration. After deducting 1/3rd, the net annual income comes to Rs.10,000/- Thus, the total compensation for loss of future dependency comes to Rs.1,50,000/-(Rs.15000 x 15 x 2/3rd) . To this amount, a sum of Rs.15,000/- towards loss of estate and Rs.5000/- towards funeral expenses are added. Thus, the total compensation comes to Rs.1,70,000/-. Since this amount is higher than the minimum limit prescribed in ***Puttamma's*** case (3 supra), the same is approved.

Therefore, in the final analysis, the compensation awarded by the Tribunal is increased from Rs.51,500/- to Rs.1,70,000/-.

11) In the result, this M.A.C.M.A. is partly allowed and ordered as follows:

a. The compensation awarded by the Tribunal is increased from Rs.51,500/- to Rs.1,70,000/- with proportionate costs and interest at 7% 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: 22.04.2015

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

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