HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.2476 of 2009

JUDGMENT:

Aggrieved by the Award dated 18.08.2007 in M.V.O.P.No.686 of 2006 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Kadapa (for short “Tribunal”), the claimants preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) The claimants are parents of the deceased—K.Reddy Rama Subbaiah. On 02.08.2005 at about 11:30 am, when the deceased along with his friend—M.Mohan Babu was proceeding on Pulsar Motor bike bearing No.AP 09 AR 0241 from Nallakunta to Paradise and when they reached near Bolakpur, one lorry bearing No.AP 10T 1661 being driven by its driver at high speed and in a rash and negligent manner, dashed their motor bike from the back side. Thereby, the deceased sustained severe injuries. Immediately he was shifted to Gandhi Hospital where he succumbed to injuries. On the averments that the accident was occurred due to the rash and negligent driving by the driver of the lorry and the claimants became destitutes due to the sudden demise of the deceased, they filed M.V.O.P.No.686 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short MV Act”) against respondents 1 and 2 who are the owner and insurer of the offending lorry and claimed Rs.10,00,000/- as compensation.

b) R1 remained *ex parte*.

c) R2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition. R2 contended that there is no negligence on the part of driver of the lorry. R2 further contended that claim is highly excessive and exorbitant and prayed for dismissal of petition.

d) During trial, PWs.1 to 3 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 oral and documentary evidence has awarded a sum of Rs.5,55,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of dependency,	Rs.5, 40,000-00
loss of estate, funeral expenses and transport charges	Rs. 15,000-00
Total	Rs. 5,55,000-00

Hence the appeal by claimants.

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

4) Heard arguments of Sri J.Seshagiri Rao, learned counsel for appellants/claimants and Sri B.Narayana Reddy, learned counsel for R2/Insurance Company. Notice sent to R1/owner returned unserved.

5 a) Impugning the Award, the learned counsel for appellants/claimants argued that the compensation was too low and not in accordance with the statutory rules and guidelines provided in the case law. Expatiating it, firstly he argued that in computing the loss of dependency, the Tribunal erred in deducting 1/3rd of the earnings twice and thereby, compensation was drastically decreased.

b) Secondly he argued that the Tribunal erred in selecting multiplier basing on the age of the parents. He further submitted that as per the decision reported in ***N. Surender Rao and others v. B. Swamy and another***[1]**,** the age of the deceased is relevant for selection of multiplier.

c) Thirdly, he argued that the Tribunal granted a lump-sum of Rs.15,000/- for funeral expenses, transport charges and loss of estate instead of awarding separate compensation. He, thus, prayed to allow the appeal and revise the compensation.

6 a) *Per contra,* the learned counsel for Respondent No.2/Insurance Company argued that in fact the compensation awarded was on high side, inasmuch as, the Tribunal placing implicit reliance on the evidence of Ex.P.3 accepted the monthly earnings of the deceased as Rs.10,000/- eventhough PW.3, who is the employer of the deceased, failed to produce aquittance register and account books showing the payment of Rs.10,000/- as salary to the deceased.

b) Secondly, he argued that in case of death of bachelor, 50% of his income has to be deducted towards personal and living expenditure following the dictum laid down by the Apex Court in the case of ***Smt.Sarla Varma vs. Delhi Transport Corporation*[2]*.*** He, thus, argued that compensation is already on high side and there is no need to revise the same and hence, he prayed for dismissal of the appeal.

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

"*Whether the award passed by the Tribunal is just and reasonable or needs interference?*"

8) **POINT:** The accident, involvement of the crime lorry and the death of deceased are admitted facts. The quantum of compensation is concerned, on perusal of the Award and on hearing both sides, this Court is of the considered view that the compensation has to be re-assessed. The avocation and income of the deceased are concerned, no doubt,

PW.3, who is the Managing Director of Bridle Information and Technology Solutions Private Limited, Secunderabad, has deposed that the deceased worked as System Administrator in his Software Solutions Company and he was paid Rs.10,000/- per month as salary. He produced Ex.A.5—Pay Slip and A.6—Salary Certificate in proof of his evidence. These documents are prepared on the Letter Heads of PW.3's Company. As rightly argued by the counsel for Insurance Company, PW.3 did not produce aquittance registers and account Books to buttress his claim that the deceased was paid Rs.10,000/- per month as salary. Therefore, his evidence relating to the payment of Rs.10,000/- as salary cannot be believed though his claim that the deceased was working as System Administrator can be accepted to be true because of the fact that apart from his evidence, in Ex.A.3—Inquest Report also, which was prepared within short time after the death of the deceased, his occupation was mentioned as System Engineer in Bridle Information and Technology Solutions Private Limited. Therefore, having regard to the nature of his occupation, his monthly income is fixed at Rs.7000/-.

9) Then deduction of amount towards personal and living expenditure is concerned, the Tribunal committed an error in deducting 1/3rd amount twice. *Per contra*, in ***Sarla Varma's*** *case* (2 supra), the Apex Court gave a ruling that in case of death of bachelor, 50% of his income has to be deducted towards personal and living expenditure. Hence, deducting the same, the net annual contribution of the deceased to his family comes to Rs.42,000/- (3500 X 12).

10) Then selection of multiplier is concerned, the Tribunal basing on the age of second claimant selected '15' as multiplier. However, in the cited decision, the Division Bench of this High Court held that for selection of multiplier, the age of deceased bachelor has alone be taken into consideration, but not the age of his dependant parents. So,

following this dictum, the age of deceased which was 24 years is taken for selection of multiplier. As per the multiplier table provided by the Apex Court in ***Sarla Varma's*** *case* (2 supra), '18' is the appropriate multiplier for the persons in the age group of 21-25 years. So, the loss of dependency comes to Rs.7,56,000/- (Rs.42,000 x 18). Thus, the said amount is fixed towards loss of dependency.

11) Then the claimants are awarded Rs.25,000/- towards funeral expenses following the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and Others***[3]**.** The claimants awarded a further amount of Rs.15,000/- towards loss of estate and transport charges. Thus, the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency		Rs. 7,56,000-00
Funeral Expenses		Rs. 25,000-00
Loss of estate and Transport Charges		Rs. 15,000-00
	Total	Rs. 7,96,000-00

So, the compensation is enhanced by Rs.2,41,000/- (Rs.7,96,000 minus Rs.5,55,000).

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

a) Compensation is enhanced by Rs.**2,41,000**/- 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: 25.03.2015

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

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HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.2476 of 2009

Dt. 25.03.2015

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

[2] 2009 ACJ 1298 (SC)

[3] 2013 9 SCC 54