THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.653 of 2009

JUDGMENT:

Challenging the compensation awarded in M.V.O.P.No.832 of 2003 dated 27.11.2004 by the Chairman, M.A.C.T-cum- Principal District Judge, Warangal (for short "the Tribunal"), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants are the wife and mother of deceased—Degala Chandramouli. Their case is that on 06.06.2003 at about 08.00 PM while the deceased was going on the motor cycle bearing No. AP 36 A 9978 from Venkatrama Theatre to Bus Stand, Warangal and reached near Azam Jahi Mills ground, a RTC bus bearing No. AP 11 z 540 came in opposite direction, being driven by its driver in a rash and negligent manner and dashed against the motor cycle of deceased. It is averred that the accident was occurred due to rash and negligent driving of the driver of the bus. On these pleas, the claimants filed M.V.O.P.No.832 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") claiming compensation of Rs.10,00,000/-.

b) Respondent No.1 remained *ex parte*.

c) The Respondent/A.P.S.R.T.C. filed counter denying all the material averments in the petition and urged to put the claimants in strict proof of the same. R2 further contended that the accident was occurred due to the fault of deceased himself as he tried to overtake his front lorry and dashed against the bus and hence there was no negligence on the part of 1st respondent-driver. It is also contended that claim is excessive and untenable.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A15 were marked on behalf of claimants. On behalf of respondent, RW.1 was examined and no documents were marked.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.1,93,200/- with costs and interest at 9% p.a under different heads as follows:

Loss of dependency Rs. 1,63,200-00

Non Pecuniary damages Rs. 15,000-00

Loss of consortium Rs. 15,000-00

Total Rs. 1,93,200-00

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 V. Hari Haran, learned counsel for appellants/ claimants. No representation for respondent.

5 a) Challenging the Award, the learned counsel appellants/claimants argued that the compensation awarded was grossly inadequate inasmuch as the Tribunal has not properly evaluated the evidence placed by the claimants showing the various income fetching avocations of the deceased i.e., (1) his owning lands and getting agricultural income, (2) running M/s Sairam Fertilizers and Pesticides and (3) owning tractor and trailer and hiring. He argued, the deceased was getting a minimum income of Rs.6000/- per month from all the aforesaid avocations, but, the Tribunal erroneously rejected the evidence and fixed his income at 1200/- per month and thereby compensation for loss of dependency has been drastically plummeted.

b) Secondly, he argued that the Tribunal has not added any amount to the income of the deceased towards future prospects. He submitted that as per the dictum laid down by the Hon'ble Apex Court in ***Rajesh and others vs. Rajbir Singh and others***, future prospects have to be taken into consideration for computation of compensation.

c) Thirdly, he argued that the Tribunal awarded a low amount of Rs.15,000/- towards loss of consortium and not granted any amount towards funeral expenses. He submitted that as per the decision referred above, a minimum of Rs.1,00,000/- for loss of consortium and Rs.25,000/- towards funeral expenses have to be awarded. He, thus, prayed to allow the appeal and enhance the compensation.

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) **POINT:** The accident, involvement of the APSRTC Bus and death of deceased are admitted facts. The bone of contention is the quantum of compensation. On perusal of the record and upon hearing the counsel for petitioner, this Court is of the considered view that compensation has to be re-assessed. Compensation for loss of dependency is concerned, it is the case of the claimants that the deceased was having about Ac.4.00 of land and was getting agricultural income. Besides, he was doing fertilizer business in the name and style of M/s Sairam Fertilizers and Pesticides. He was also owing a tractor-cum-trailer and by hiring the same, he was earning income. So, according to the claimants, the deceased was earning an average income of Rs.6000/- per month. They produced Exs. A.5 to A.15 in proof of his different avocations. Exs.A.5 and A.13 relate to his agricultural lands and income. EX.A.7 to 11 relate to fertilizer business. Whereas, Exs. A.14 and 15 relate to tractor-cum-trailer.

8) Ex.A.5 was discarded by the Tribunal as it was issued by Panchayat Secretary and it was not a certified copy. Similarly Ex.A.13--the Agriculture Income Certificate issued by M.R.O., Chennaraopet is concerned, the Tribunal discarded the same on the ground that without any proof and authenticity, a high agricultural

income of Rs.1,50,000/- was certified by the M.R.O. Thus, the Tribunal totally rejected the agricultural income of the deceased.

9) Then, income from fertilizer shop is concerned, the Tribunal discarded Exs. A.7 to 11 documents on the ground that none of those documents show the name of the deceased as partner or having any interest in the said shop.

10) Then, tractor-cum-trailer is concerned, the Tribunal rejected Exs. A.14 and 15. On the observation that Ex.A.14--tractor-cum-trailer was in the name of one Venkateswarlu of Narasanagar and it was transferred in the name of M/s Sriram Fertilizers and Pesticides and Ex. A.15 was only a permission to run the trailer in the name of deceased. Thus, at the outset, the Tribunal did not approve Exs.A.7 to 11 and 13 to 15 and notionally fixed the income of deceased at Rs.1200/- per month and accordingly computed the compensation.

11) On perusal of the record, I am unable to accept the finding of the Tribunal. The agricultural income of the deceased is concerned, it is true that Ex.A.5--No.3 Cultivation Adangal Certificate was not a certified copy issued by the MRO, but it was issued by the Panchayat Secretary and so no reliance can be place on it. However, Ex.A.13 Agriculture Income Certificate is concerned, it was issued by the M.R.O., Chinaaraopet, certifying that the deceased was owning Ac.04.07 guntas of land and getting income of Rs.1,50,000/-. Though the income certified by him has no basis and hence can be rejected, but still the certificate issued by the M.R.O regarding the deceased owning Ac.04.07 guntas of land is concerned, the same can be believed as he is authorised to certify the ownership of agricultural lands. Therefore, it can be held that the deceased was owning Ac.04.07 guntas of agricultural land and earning agricultural income. Though he died, the lands will remain intact, but his family members have to incur some supervisory charges for getting the land cultivated. This aspect has to be taken into consideration while fixing

the income of the deceased.

12) Then, the fertilizer shop is concerned, no doubt, Exs. A.7 to 11 do not show the name of the deceased as either owner or partner of M/s Sairam Fertilizers and Pesticides. However, in Ex.A.2-Inquest Report, which was prepared within short time after the death of deceased, the avocation of the deceased was mentioned as fertilizers business. Since Ex.A.2 was generated at the earliest point of time after the death of deceased, the particulars relating to the avocation of the deceased cannot be said to be manipulated to get high compensation. So, in my considered view, fertilizers business of the deceased can be accepted.

13) Then, owning of tractor-cum-trailer is concerned, as rightly pointed out by the Tribunal, Ex.A.14 tractor-cum-trailer stands in the name of Venkateswarlu said to be purchased under hire purchase agreement from Srirama Auto Mobile Financiers and Ex.A.15 only shows the permit issued in favour of the deceased in respect of an LMV trailer. So, there is no clear evidence regarding the deceased owning a tractor-cum-trailer. Therefore, the income of the deceased from agriculture and fertilizers business can be taken up as Rs.2,500/- per month. To this income, Rs.500/- is to be added towards future prospects. So, the annual income of the deceased, which will serve the purpose as multiplicand comes to Rs.36,000 (3000 X 12). From this, 1/3rd is deducted towards personal expenditure of the deceased. By multiplying the balance amount with '17', we will arrive at the loss of dependency, which comes to Rs.4,08,000/- (Rs.3000x12x 2/3 x17).

14. Then compensation for loss of consortium is concerned, having regard to the fact that the deceased died in the prime of his youth, the first claimant is awarded Rs.25,000/- towards loss of consortium. Further, going by the dictum of the Hon'ble Apex Court in ***Rajesh's*** case, the claimants are awarded Rs.25,000/- towards funeral expenses. Thus, the total compensation payable to the claimants

under different heads is as follows:

a. loss of dependency Rs. 4,08,000/-

b. funeral expenses Rs. 25,000/-

c. Loss of Consortium Rs. 25,000/-

Non-pecuniary damages Rs. 15,000/-

Total Rs. 4,73,000/-

So, the compensation is enhanced by Rs.2,79,800/- (Rs.4,73,000 minus Rs.1,93,200).

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

a. The claimants are awarded Rs.4,73,000/- as compensation with proportionate costs and interest at 9% per annum from the date of OP till the date of appeal and at 7.5% per annum thereafter till realization.

b. Respondent is directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against it.

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

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U.DURGA PRASAD RAO, J

Date: 31.03.2015

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

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.653 of 2009

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DT.31-03-2015

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