THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.1164 of 2009

JUDGMENT:

Challenging the Award dated 14.12.2007 in O.P.No.1131 of 2002 passed by the Chairman, MACT-cum-I Additional District Judge, Nizamabad (for short "the Tribunal), the Oriental Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 18-05-2002 at about 11.30 PM while the deceased by name Syed Hakeem was traveling in a Toyota Qualis Jeep bearing No. AP 15 V 5696 from Ibrahimpatnam towards Metpally side and when it reached at Venkataraopet outskirts on Jagitial to Armoor Road, the driver of the jeep drove the same in a rash and negligent manner at high speed and dashed the tree. In the resultant accident, the deceased received multiple injuries and thereafter, he was shifted to Government Hospital, Metpally, where he died while undergoing treatment. It is averred that the accident was occurred due to the negligence of the driver of the jeep and due to abrupt death of deceased, the claimants, who are the parents of the deceased, became destitutes. With these averments, the claimants filed O.P.No.1131 of 2002 under Sec.166 of Motor Vehicles Act, 1988 (for short "M.V.Act") against respondent Nos.1 and 2, who are owner and insurer of the Jeep, and claimed Rs.10,00,000/- as compensation.

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

c) Respondent No.2/Insurance Company opposed the claim denying all the material averments made in the claim petition and urged to put the claimants in strict proof of the same. R2 further contended that the driver of the jeep had no valid and effective driving license at the time of accident. It further contended that the deceased was travelling in the offending vehicle as fair paid passenger and as such the owner of the vehicle is liable to pay the compensation to the claimants. Finally, it contended that the claim is highly excessive and exorbitant and prayed for dismissal of the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of claimants. None were examined and no documents were marked on behalf of respondents.

e) The Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.5,00,000/- with proportionate costs and interest at 7.5% p.a. against respondent Nos. 1 and 2 under different heads as follows:

Loss of Dependency	Rs.4,80,000-00
Funeral Expenses	Rs. 05,000-00
Loss of Love & Affection	Rs. 15,000-00
Total	Rs.5,00,000-00

Hence the appeal.

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

4. Heard arguments of Sri G. Purushotham Rao, learned counsel for Appellant/Insurance Company, Sri P. Radhive Reddy, learned counsel for respondent Nos.1 and 2 and Sri K. Vasudeva Reddy, learned counsel for Respondent No.3/Respondent No.1 in OP.

5) Challenging the quantum of compensation awarded by the Tribunal as high side, the learned counsel for appellant, firstly argued that the Tribunal committed a grave error in taking the income of the deceased as Rs.4,000/- per month. He submitted that the claimants did not examine the doctor, who allegedly engaged the deceased as driver and who issued Ex.A.5-- Certificate to prove that the deceased was of driver. In that view of the matter, the Tribunal ought not to have

considered the deceased as a driver and fix his notional income at Rs.4,000/- per month. By this, he argued, the compensation for loss of earnings was drastically increased.

b) Secondly, the learned counsel argued that the Tribunal committed error in deducting 1/3rd from the notional annual income of the deceased towards his personal expenses. He submitted that in view of the Judgment of Apex Court in ***Smt.Sarla Varma vs. Delhi Transport Corporation***[1], it ought to have deducted one half instead of 1/3rd since the deceased was bachelor.

(c) Thirdly, he argued that rate of interest awarded by the Tribunal is on high side and needs to be scaled down.

He, thus, prayed to allow the appeal and the compensation may be re-assessed.

6) Per contra, while supporting the above, the learned counsel for respondents No.1 and 2/claimants argued that in fact the compensation awarded was much lower than deserved by the claimants since the Tribunal has not taken into consideration the future prospects of the deceased in assessing his income and on the other hand, it took a moderate income of Rs.4,000/- per month. The learned counsel further argued that the Tribunal took the mother's age of the deceased for selection of multiplier. As per the latest Judgment of the Hon'ble Apex Court reported in ***N. Surender Rao v. B. Swamy***[2], the age of the deceased has to be taken into consideration for selection of multiplier and if the age of the deceased which was 20 years is taken into consideration, the multiplier should be "18" but not "15" and in view of the above, the compensation was already drastically reduced and therefore, the compensation may not be further reduced by deducting one half from the annual income of the deceased, as prayed for by the learned counsel for appellant. He, thus, prayed to dismiss the appeal.

7) The learned counsel for Respondent No.3/Respondent No.1 in O.P. submitted that the policy was in force and hence the Insurance Company is liable to pay compensation to the claimants.

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

"Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?"

9) **POINT**: The accident, involvement of Qualis bearing No.AP 15 V 5696 and death of the deceased are not in dispute. The bone contention is the quantum of compensation. The Tribunal after considering the avocation of the deceased as driver fixed his monthly income as Rs.4,000/-. Basing on the age of his mother as 45 years, it selected "15" as multiplier. The Tribunal, thus, arrived the loss of earning of the deceased at Rs.4,80,000/- (4000 X 12 X 2/3rd x 15). To this amount, the Tribunal added Rs.5000/- towards funeral charges and Rs.15,000/-towards loss of love and affection and awarded Rs.5,00,000/- as compensation.

10) Now the first argument of learned counsel for appellant is that the Tribunal grossly erred in fixing the notional income of the deceased as Rs.4,000/-. On perusal of the record, this Court is unable to accept the said argument. The deceased was 20 years old at the time of accident and as per the claimants, he was working as driver under one Doctor U. Seshaphani of Sirecilla, Karimnagar, and getting Rs.8000/- per month. They produced Ex.A.4—Driving License and Ex.A.5—Salary Certificate said to be issued by the said Doctor U. Sesha Phani. However, the Claimants have not examined the said doctor. Therefore, the Tribunal did not accept Ex.A.5--Certificate. However, considering that the deceased was an young man and is having driving license, it appears that the Tribunal opined that if he was engaged as a driver, he would surely earn Rs.4,000/- per month and

accordingly fixed his notional income as Rs.4000/- per month. I see no grounds in the said finding.

11) The second argument of learned counsel for appellant is that the Tribunal ought to have deducted 50% of the amount from the annual income of the deceased, as he was a bachelor, by following the decision reported in ***Sarla Varma's*** *case* (1 supra). It is true that in the said decision, the Hon'ble Apex Court held that where the deceased was a bachelor, normally a deduction equivalent to 50% has to be deducted towards personal and living expenses. There is no demur in the said contention. However, at the same time, considering the arguments of learned counsel for respondents/claimants, this Court is not inclined to deduct 50% of deduction for the reason that the Tribunal while assessing the monthly income of the deceased has not taken into consideration the future prospectus, as laid down in the very same decision of ***Sarla Varma's*** *case* (1 supra) and therefore, the income of the deceased is already drastically decreased. Further, the Tribunal has taken into consideration the age of the mother of the deceased instead of his age for selection of multiplier. As per the decision reported in ***N. Surender Rao****'s case* (2 supra), the age of the deceased bachelor has to be taken into consideration for selection of multiplier. If this has to be followed, the multiplier comes to "18" but not "15". By this reason also, the compensation is already reduced. Since the respondent Nos. 1 and 2/claimants were not preferred any independent appeal, the compensation need not be enhanced, but, however, their arguments can be taken into consideration for sustaining the compensation, which was awarded by the Tribunal. Therefore, I am not inclined to deduct 50% from the gross earnings of the deceased, in which case, the compensation would be drastically reduced to the disadvantage of the respondents/claimants. Therefore, I find no tenable grounds to interfere with the findings of the Tribunal.

12. The third argument of learned counsel for appellant is that the rate of interest awarded by the Tribunal is on high side. It is seen from the Award that the rate of interest awarded by the Tribunal is just and reasonable and on the other hand, it had not exorbitant rate. Thus, I find no merits in this argument and there is no need to revise the same.

13. In the result, I find no merits in the appeal and accordingly, this M.A.C.MA is dismissed by confirming the Award passed by the Tribunal in M.V.O.P.No.1131 of 2002. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 01.07.2015

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[1] 2009 ACJ 1298 (SC)

[2] 2014(1) ALT 512