HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3884 of 2009

JUDGMENT:

Aggrieved by the Award dated 13.08.2009 in O.P.No.595 of 2005 passed by the Chairman, M.A.C.T-cum-XXI Additional Chief Judge, Hyderabad, (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants are parents of the deceased—B.Krishna. Their case is that on 16.05.2004 at about 6:00 pm, when the deceased, who was working as Computer Hardware Engineer in YER NEST COMP ACTIVITY, Hyderabad, was returning to home in auto bearing No.AP 9 W 4930 and when it reached near Food World, Road No.36, Jubilee Hills, Hyderabad, the driver of the auto drove the same in a rash and negligent manner and dashed against DCM Van bearing No.AP 5 X 1822, due to which he received grievous head injury and became unconscious and he was shifted to NIMS Hospital where he was declared dead. It is averred that the auto driver was responsible for the accident and due to sudden demise of the deceased, the claimants became destitutes and lost their fender. On these pleas, the claimants filed O.P.No.595 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") against respondent Nos.1 and 2, who are the owner and insurer of offending auto and claimed Rs.1,00,000/- as compensation.

b) Respondent No.1 remained *exparte*.

c) Respondent No.2/Insurance Company filed Counter denying all the material averments and urged to put the claimants in strict proof of the same. It contended that the auto driver was not at fault in the resultant accident and that he was not having valid and effective driving licence at the time of accident and R1 being the owner violated the policy conditions, as such it was not liable to pay compensation and prayed for dismissal.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked on behalf of claimants. Policy copy filed by respondent was marked as Ex.B.1.

e) The Tribunal on appreciation of both oral and documentary evidence though observed that the claimants are entitled to compensation of Rs.5,91,000/- but restricted to the amount claimed Rs.1,00,000/- and accordingly awarded with costs and interest @ 6% p.a against the respondents 1 and 2 under different heads as follows:

Loss of earnings	Rs.5,76,000-00
Loss of estate	Rs. 10,000-00
Funeral expenses	Rs. 5,000-00

Total
Rs.5,91,000-00

Hence the appeal by claimants.

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

4) Heard arguments of Sri Mohd.Yousuf, learned counsel for appellants/claimants and Sri C.Buchi Reddy, learned counsel for respondent No.2/Insurance Company. Notice sent to R.1/owner was unserved.

5) learned counsel for appellants/claimants criticized the award on the main argument that the Tribunal having come to a conclusion that the claimants are entitled to compensation of Rs.5,76,000/-, erroneously limited it to Rs.1,00,000/- on the observation that the claim of the claimants was to that extent only. He vehemently argued that the precedential jurisprudence on this aspect would show that the Tribunal has to award just and reasonable compensation and in that process it can award more amount than claimed by the parties if in its opinion they deserve. He thus contended that the lower Tribunal was not correct in limiting the compensation to Rs.1,00,000/-. To buttress his contention that the Tribunal can award compensation exceeding the claimed amount, he cited the following decisions:

i) ***Apparaju Sobha Rani vs. Midiyam Rama Rao and***

another[1]

ii) ***Shahanaj vs. Andhra Pradesh State Road Transport Corporation***[2]

He thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, opposing the appeal, learned counsel for 2nd respondent/ Insurance Company would argue that the fault in the accident as per charge sheet was on the driver of the DCM van but the claimants filed the O.P against owner and insurer of the auto and therefore, the claim itself was not maintainable. He further argued that the Tribunal having observed that there was no cogent evidence regarding the employment and earnings of the deceased, wrongly accepted his monthly income at Rs.4,000/- and on that erroneous premise it arrived the loss of earnings at Rs.5,76,000/- and therefore, the said amount cannot be awarded to the claimants. He argued that the claimants have not filed any amendment petition to claim higher amount and therefore, in this appeal they cannot claim Rs.5,91,000/- as compensation which was erroneously arrived at by the lower Tribunal. He thus prayed to dismiss the appeal.

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

"Whether the award passed by the Tribunal is factually

and legally sustainable?"

8) **<u>POINT</u>**: The lower Tribunal determined the compensation treating the claim application as one under Sec.163-A of M.V. Act. Therefore, the claimants need not establish the fault of either the auto driver or the driver of DCM van. Suffice for them to establish that the deceased met with his death in the accident arising out of the user of the auto in which he travelled. This fact was sufficiently proved by the claimants to claim compensation under Sec.163-A of M.V. Act. It is true that though the claimants led oral evidence to the effect that the auto driver was responsible for the accident, however the police under Ex.A.4 charge sheeted the driver of the DCM van. Since the claim is one under Sec.163-A of M.V. Act, the lower Tribunal rightly did not give much importance to this aspect. The respondents too did not try to establish that the auto driver was not responsible for the accident and they did not examine him before the lower Tribunal. Hence in this appeal the respondent/ Insurance Company cannot take shelter under Ex.A.4—charge sheet and contend that the claim is not maintainable against the owner and insurer of the auto and claim should have been made against the owner and insurer of the DCM van. As already stated supra, since the claim is filed under Sec.163-A of M.V. Act, the claimants can file the claim petition against the present respondents.

9) Now coming to the quantum of compensation, it is true

that the lower Tribunal arrived at a figure of Rs.5,91,000/- on its own conclusion. In my considered view, the Tribunal was not right in accepting the earnings of the deceased at Rs.4,000/- though it was right in coming to the conclusion that the deceased was doing computer job basing on Ex.A.2—inquest report. It should be noted that as per claimants, the deceased was working as a Computer Hardware Engineer in YER NEST COMP ACTIVITY, Hyderabad and earning Rs.4,000/- p.m. To establish this fact, the claimants no doubt produced Ex.A.8—letter purported to be issued by the authorized signatory of the said company. However, the claimants have not examined any authorized person from that company. Therefore, the Tribunal rightly rejected the said letter and by taking Ex.A.2 rightly concluded that the deceased was doing some computer job. However, the Tribunal was not right in accepting the salary of Rs.4,000/- p.m as claimed by the claimants. In Ex.A.2 it is only mentioned that the occupation of the deceased was computer job but there were no details as to the nature of the said job. In such view, the salary of the deceased by the time of his death can be accepted as Rs.2,000/- and a sum of Rs.500/- can be added towards future prospects. Deducting 1/3rd towards his personal expenditure, the net annual contribution comes to Rs.20,000/- (Rs.2500/- x 12 x 2/3rd). Following the Second Schedule of the M.V. Act, '18' is selected as multiplier. Thus the loss of earnings of the deceased comes to **Rs.3,60,000/-**(Rs.20,000/- x 18). Thus, the total compensation payable to the claimants under different heads is detailed as below:

Loss of earnings	Rs.3,60,000-00
Loss of estate	Rs. 10,000-00
Funeral expenses	Rs. 5,000-00
Total	Rs.3,75,000-00

Thus the compensation is enhanced by Rs.2,75,000/- (Rs.3,75,000/- minus Rs.1,00,000/-).

It is a trite law that while awarding just and reasonable compensation, the Court can award more compensation than claimed, if the claimants are entitled which is evident from the decisions cited by the appellants and also from the decision of Apex Court reported in ***Nagappa vs. Gurudayal Singh***[3].

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

a) The compensation is enhanced by **Rs.2,75,000**/- with proportionate costs and simple interest @ 6% per annum from the date of OP till the date of realization.

b) The claimants are directed to deposit the additional court fee on the enhanced amount of **Rs.2,75,000/-** (Rs.3,75,000/- minus Rs.1,00,000/-) within one month from the date of this judgment.

c) The 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: 16.12.2015

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[1] 2014 ACJ 2714 (AP)

[2] 2014 ACJ 2824 (AP)

[3] 2003 ACJ 12 (SC)