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IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

M.A.C.M.A.No.52 of 2013

Between:

Avula Somakka and 2 others

... Appellants/Petitioners

and

- 1. Mishen Khalimulla S/o Abdul Malik
- 2. The New India Assurance Company Limited,
rep by its Divisional Manager, Divisional Office,
Opp: Nellore Bus Stand, Trunk Road,
Ongole, Prakasam District.

... Respondents.

DATE OF JUDGMENT PRONOUNCED: 12-08-2015

SUBMITTED FOR APPROVAL:

THE HON’BLE SRI JUSTICE T.SUNIL CHOWDARY

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.52 OF 2013

JUDGMENT:

1. This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 01.08.2012 passed in M.V.O.P.No.423 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (FTC), Ongole, wherein and whereby, an amount of Rs.3,69,500/- was awarded with interest @ 9% per annum as against the claim of Rs.5,00,000/-.

2. The parties to this appeal are hereinafter referred to as they are arrayed in M.V.O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal, briefly, are as follows: On 28.10.2010, One Venkateswarlu and his wife were proceeding to Yerragondapalem in Maxi Cabs auto rickshaw bearing No.AP 21TT 7631. When the petitioner reached Varadaiah Bavi Motu the driver of the Maxi Cabs auto rickshaw bearing No.AP 21TT 7631 (for short 'the crime vehicle') lost his control and dashed against the motor cycle. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Due to the injuries, Venkateswarlu (hereinafter referred to 'the deceased') died on the spot. The Station House Officer, Yerragondapalem police station, registered a case in Cr.No.100 of 2010 under sections 338 and 304-A IPC and 134 (a) & (b) of Motor Vehicles Act against the driver of the crime vehicle. By the time of the accident, the deceased was aged about 43 years and used to earn Rs.4,000/- to Rs.5,000/- per month. The first petitioner is the wife and the petitioners No.2 and 3 are the sons of the deceased. The petitioners are the dependants on the income of the deceased. The crime vehicle belongs to the first respondent was insured with the second respondent company as on the date of accident. Therefore, the respondent Nos.1 and 2 are

jointly and severally liable to pay compensation to the petitioners.

4. The first respondent filed counter denying the manner of the accident, age and income of the deceased. The driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The crime vehicle was insured with the second respondent company as on the date of accident, therefore, the second respondent alone has to pay compensation, if any, to the petitioners.

5. The second respondent filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased. The driver of the crime vehicle was not having valid and effective driving licence as on the date of accident. The accident occurred due to the rash and negligent driving of the rider of the motor cycle and there was no negligence on the part of the driver of the crime vehicle. The first respondent had violated the terms and conditions of the policy, therefore there is no contractual or statutory obligation on the part of the second respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the deceased Avula Venkateswarlu died in Motor Vehicle accident due to the rash and negligent driving of the crime vehicle bearing No. AP 21TT 7631 by its driver?
- ii. Whether the petitioner is entitled for the compensation, if so to what extent and from whom?
- iii. To what relief?

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7. During the course of trial, on behalf of the petitioner, P.W.1 was

examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, no oral evidence was let in but Ex.B1 was marked.

8. On appraising the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.3,69,500/- directing the respondents No.1 and 2 to pay the same jointly and severally with costs and interest @ 9% p.a. from the date of petition till the date of realisation. Feeling aggrieved by the judgment and decree awarded by the tribunal, the claimants preferred the present appeal.

9. The contention of the learned counsel for the petitioners is two fold.

i. The Tribunal failed to consider that the deceased was a businessman therefore the claimants are entitled for 30% towards future prospects over and above the monthly income of the deceased.

ii. The tribunal has awarded a meagre amount under different heads and

iii. The tribunal has not considered the oral and documentary evidence in right perspective and awarded compensation on assumptions and presumptions.

10. **Per contra** the learned counsel for the second respondent submitted that the tribunal rightly considered the income of the deceased and awarded just and reasonable compensation. He further submitted that absolutely there is no material on record to establish as on the date of the accident, the deceased was businessman by profession.

11. Now the point that arises for consideration in this appeal is:

1. Whether the compensation awarded by the Tribunal is just and reasonable or not?

POINT :

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12. As per the findings of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased. The findings of the Tribunal on issue No.1 became final in view of non-filing of appeal or cross-objections by the respondents No.1 and 2. Hence, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the crime vehicle, which resulted in the death of the deceased.

13. Basing on the recitals of the Ex-A.3-Post Mortem Examination report, the Tribunal arrived at a conclusion that the deceased was aged about 40 years by the time of his death. The tribunal rightly had taken the multiplier as '15'. Except self-served testimony of PW.1, there is no other convincing evidence to establish that the deceased used to earn Rs.4,000 to Rs.5000/- per month. In the cross-examination, PW.1, who is none other than the wife of the deceased, in unequivocal terms deposed that there is no proof that the deceased used to earn Rs.5,000/- per month as on the date of the accident. It is not un-common to exaggerate the income of the deceased so as to claim more compensation. In the absence of documentary evidence, some guess work is inevitable in order to determine the income of the deceased. Taking into consideration the age of the deceased and other attending circumstances, the tribunal rightly assessed the income of the deceased at Rs.3,000/-per month, out of which, 1/3rd shall be deducted towards his personal expenses. The deceased may contribute Rs.2,000/- (3000-1000) per month and Rs.24,000/- (2000 x 12) per annum to his family members. The loss of

dependency comes to Rs.3,60,000/- (24,000 x 15 = 3,60,000).

14. As rightly pointed out by the learned counsel for the petitioners the tribunal awarded a meagre amount of Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**^[1], and **Kishan Gopal v Lala**^[2], the petitioners are entitled to Rs.50,000/- towards conventional damages apart from Rs.9,500/- already granted. Thus the total compensation for which the petitioners are entitled to is Rs.4,19,500/-. The compensation awarded under the above heads would meet the ends of justice.

15. Having regard to the facts and circumstances of the case, the Petitioner No.1 alone is entitled for the enhanced compensation of Rs.50,000/-. The petitioners/claimants are also entitled for interest @ 7.5% p.a. from the date of petition till the date of realisation on the enhanced amount only.

16. In the result, M.A.C.M.A. is allowed in part. The compensation is enhanced from Rs.3,69,500/- to Rs.4,19,500/-. The enhanced amount of Rs.50,000/- shall carry interest at 7.5% per annum from the date of the petition till realisation. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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T.SUNIL CHOWDARY, J

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Date:12-08-2015

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^[1] 2014 ACJ 1430

[\[2\]](#) (2014) 1 SCC 244