HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.563 of 2011

JUDGMENT:

Aggrieved by the lower Tribunal awarding Rs.3,55,000/- against the claim of Rs.4,00,000/- for the death of one Madhur Mallaiah and also on the ground that they are entitled to more than the claimed amount of Rs.4,00,000/-, LRs of the deceased filed the instant M.A.C.M.A for enhancement of the compensation.

2) Pending appeal, the appellants/claimants filed M.A.C.M.A. M.P No.3354 of 2015 under Order VI Rule 17 r/w 151 CPC and sought for amendment of the claim from Rs.4,00,000/- to Rs.8,00,000/- and this Court vide its order dt.21.06.2016 allowed the said petition by directing them to pay the additional court fee on the enhanced amount.

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

4) Heard arguments of Sri S.Chandraiah, learned counsel for appellants/ claimants and Sri Teegala Narsi Reddy, learned counsel for 2nd respondent/ Insurance Company. Notice to R.1/owner of the vehicle was unserved.

5) Severely castigating the compensation awarded as low and inadequate, learned counsel for claimants argued that the Tribunal grossly erred in fixing the income of the deceased as Rs.2,500/- p.m inspite of the claimants placing

cogent evidence on record showing that the deceased was a mason i.e, a skilled labourer and earning Rs.5,000/- p.m; and thus Tribunal ought to have fixed his income as Rs.5,000/- p.m following the decision reported in ***Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.***[1]; further, the Tribunal failed to take into consideration the future prospects of the deceased; the Tribunal erred in deducting 1/3rd instead of 1/4th from the gross earnings of the deceased. It is argued, in view of the fact that four persons were depending on the earnings of the deceased, the Tribunal ought to have deducted 1/4th, following the ratio laid down by the Apex Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another***[2]. It is also argued that the Tribunal committed error in not granting adequate compensation for loss of funeral expenses and loss of consortium in tune with the dictum laid in ***Rajesh and others vs. Rajbir Singh and others***[3]. It is further argued that the Tribunal failed to award any compensation to the parents of the deceased for loss of love and affection. Due to all the aforesaid short-comings, it is pointed out, compensation was drastically reduced and therefore, it needs to be enhanced.

6) Per contra, opposing the appeal learned counsel for Insurance Company vehemently argued that the compensation awarded by the Tribunal is already on high side and therefore, there is no need to further enhance the

same. Expatiating the same, he argued that there is no cogent proof for the claim that the deceased was a mason i.e, a skilled labourer and was earning Rs.5,000/- p.m and on the other hand, in FIR which was lodged by the father of the deceased, it was clearly mentioned that the deceased was a labourer and further, in inquest report also the deceased was referred only as a coolie and therefore, it is preposterous to contend that he was a mason and earning Rs.5,000/- p.m. Further, the claim being one under Sec.163-A of Motor Vehicles Act (for short "M.V.Act"), even assuming that the deceased was earning Rs.5,000/- p.m, the Tribunal cannot accept the same, because the maximum income that can be taken into consideration is only Rs.40,000/- p.a under Sec.163-A of M.V.Act. In that view, the amount of Rs.2,500/- p.m fixed by the Tribunal cannot be said to be on lower side.

a) Nextly, learned counsel argued that though four claimants are shown in the claim petition, the 4th claimant, who is the major brother of the deceased cannot be treated as dependent under law and therefore, the Tribunal rightly rejected his claim. In that view, the dependant claimants being three in this case, the Tribunal rightly deducted 1/3rd from the gross earnings of the deceased. He thus prayed to dismiss the appeal.

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

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

8) **<u>POINT</u>**: The accident, involvement of Cruiser vehicle bearing No.AP 22 V 1127 and death of deceased are not in dispute. The rival contentions in this appeal are only in respect of the adequacy of compensation. Hence, I scrutinized the record to know whether the compensation awarded is just and reasonable or not.

9) The claim is one under Sec.163-A of M.V.Act. As rightly contended by learned counsel for Insurance Company, the maximum annual income that can be taken in a claim under this Section is only Rs.40,000/-. Be that as it may, the contention of the claimants is that the deceased was a mason and earning Rs.5,000/- p.m and the Tribunal ought to have accepted the said amount in view of the evidence of PW.2 and ought to have added 50% towards future prospects. In view of the fact that the claim petition is filed under Sec.163A of M.V.Act, even if the above contention of the claimants is true, the same cannot be countenanced as in that instance, the annual income of the deceased will be more than Rs.40,000/-. That apart, when facts and evidence are perused, it must be said, the claimants failed to prove that the deceased was a mason i.e, a skilled labourer and earning Rs.5,000/- p.m. In Ex.A.1—FIR lodged by none other than the father of the deceased, it was clearly mentioned that the deceased was a coolie. Further, in

Ex.A.2—Inquest Report also the deceased was referred as a coolie but not as a mason. Therefore, the contra evidence of PWs.1 and 2 cannot be accepted to hold that the deceased was a mason. In that view of the matter, the Tribunal cannot be faltered for fixing the monthly income of the deceased as Rs.2,500/-. However, since the Tribunal failed to take into consideration the future prospects of the deceased, a suitable amount has to be added to his earnings. Accordingly, the annual income of the deceased and his future prospects are together fixed at Rs.40,000/-. The decision in ***Ramachandrappa***'s case (1 supra) cited by the appellants to contend that the minimum earnings of the deceased should be taken atleast at Rs.4,500/- p.m cannot be accepted for the reason that in that decision, the claim petition was filed under Sec.166 of M.V.Act. In that view, Hon'ble Apex Court has accepted the monthly earnings of the appellant therein as Rs.4,500/-. However, the present claim is one under Sec.163-A of M.V.Act and hence the said decision cannot be followed.

10) Then deduction is concerned, since 4th claimant is a major brother of the deceased, he cannot be considered as a dependant and therefore, the total number of persons depending on the deceased can be taken as '3' and accordingly, 1/3rd has to be deducted from the gross earnings of the deceased. Multiplier is concerned, since the deceased was aged 25 years, '18' has to be accepted as

multiplier following the decision of the Apex Court in ***Sarla Verma***'s case (1 supra). Thus the compensation for loss of dependency comes to **Rs.4,80,000/-** (Rs.40,000/- x 18 x 2/3rd).

11) It is seen that the Tribunal awarded low compensation for funeral expenses and loss of consortium. Hence keeping in mind the ruling in ***Rajesh***'s case (2 supra), compensation for funeral expenses is enhanced to **Rs.25,000/-**. Loss of consortium is concerned, considering the fact that the 1st claimant lost her husband in her prime youth, compensation is enhanced to **Rs.25,000/-**. Then considering the fact that the claimants 2 and 3 lost their son in their old age, a sum of **Rs.20,000/-** is awarded towards loss of love and affection.

Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency	Rs. 4,80,000-00
Funeral expenses	Rs. 25,000-00
Loss of consortium	Rs. 25,000-00
Loss of love and affection	Rs. 20,000-00
Total:	Rs.5,50,000-00

So, the compensation is enhanced by **Rs.1,95,000/-** (Rs.5,50,000/- minus Rs.3,55,000/-).

12) In the result, this Appeal is partly allowed with costs and ordered as follows:

(i) The compensation is enhanced from **Rs.3,55,000/-** to

Rs.5,50,000/- with proportionate costs and interest @ 7.5% per annum from the date of O.P till the date of realization.

(ii) Respondents in the O.P are directed to deposit the compensation amount within two(2) 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: 27.08.2016
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[1] 2011 (6) ALD 75 (SC)
[2] 2009 ACJ 1298 (SC)
[3] 2013 ACJ 1403 (SC)