HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1243 of 2010

JUDGMENT:

Challenging the compensation awarded in O.P.No.778 of 2005 by the MACT (Principal District Judge), Nalgonda as grossly low and inadequate, the claimants therein preferred the instant appeal.

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

3 a) The factual matrix of the case in brief is that on the night of 05.04.2005 at about 8:00pm, the deceased—Venkateshwar Reddy along with his family members was proceeding in a Maruthi Car bearing No.AP 24 J 1777 and when reached Chinthapally cross roads at Miryalaguda bypass road, a lorry bearing No.AP 16 TT 4667 came in opposite direction and dashed the car. As a result, the deceased and his younger son met with instantaneous death whereas his wife and elder son, who are the claimants in O.P.No.778 of 2005 sustained injuries. Accusing that the lorry driver was responsible for the accident, the claimants filed the claim petition against the respondents 1 and 2, who are the owner and insurer of the lorry and claimed Rs.22,00,000/- as compensation.

b) 1st respondent remained *ex parte*.

c) 2nd respondent filed counter and opposed the petition denying all the material averments in the claim petition.

d) On full-fledged trial, the Tribunal awarded a sum of **Rs.5,96,500/-** as compensation under following different heads:

Loss of dependency	Rs.5,63,472-00
Loss of consortium	Rs. 15,000-00
Loss of estate	Rs. 15,000-00
Funeral and transport expenses	Rs. 3,000-00
Total	Rs.5,96,472-00

(Rounded off to Rs.5,96,500/-)

Hence the appeal by claimants.

4) Heard arguments of Sri P.Prabhakara Rao, learned counsel for appellants/claimants and Sri Nisaruddin Ahmed Jeddy, learned counsel for R.2/Insurance Company. Notice to R.1 was returned unserved.

5) The main plank of argument of the learned counsel for claimants is that the deceased was working as Development Officer in Oriental Insurance Company and earning substantial gross salary of Rs.12,020/- p.m but the lower Tribunal erroneously took only his net salary of Rs.3,870/- for computation of loss of dependency and thereby compensation was drastically plummeted. He would argue that the Tribunal committed another folly in not taking into consideration the agricultural income of the deceased despite he was owning about 10 Acres of agricultural land as depicted by Ex.A.7—pahani. He would further argue that the Tribunal applied a wrong multiplier of '14' instead of '15'. He thus prayed to allow the appeal and reassess the compensation.

6) Per contra, learned counsel for Insurance Company while fairly conceding that the Tribunal ought to have taken gross salary, however, submitted that the statutory deductions have to be made there from. As against the argument of learned counsel for claimants that the Tribunal failed to take into consideration the agricultural income of the deceased, he submitted that due to the death of the deceased, his family would not sustain any loss of agricultural income and therefore, the Tribunal was right in not considering the agricultural income of the deceased into consideration.

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 Maruthi Car bearing No.AP 24 J 1777 and lorry bearing No.AP 16 TT 4667 and death of deceased are all admitted facts. Compensation is concerned, as stated supra, the Tribunal awarded a sum of Rs.5,63,472/- for the loss of dependency. To compute this compensation, the Tribunal took the net salary of the deceased into account which is obviously a wrong method. It should be noted that from gross salary, only statutory deductions like Income Tax, Professional Tax and other taxes have to be applied but contributions and allowances need not be deducted vide the decision of Apex Court reported in ***National Insurance Co. Ltd. vs. Indira Srivastava***[1] wherein it was held thus:

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[1] 2008 ACJ 614 (SC)

> "<u>Para 17</u>: *The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon may be deducted.*"

It is not in dispute that the deceased was working as Development Officer in Oriental Insurance Company. The claimants filed Exs.A.6, A.9 and Ex.A.10 in proof of the salary of the deceased and also examined PW.2. As per Ex.A.6, the gross salary of the deceased was Rs.12,020/-. Ofcourse in the said certificate the deductions, much less statutory deductions, are not mentioned. So ex.A.6 is not showing the full picture relating to the salary particulars of the deceased. The claimants then filed Ex.A.9—pay slip which again relates to the salary of the deceased for the month of March, 2005. Ex.A.10 is the pay slip of the deceased relating to April, 2005. Since the deceased died on 05.04.2005, his pay relating to the previous month i.e, March, 2005 as depicted in Ex.A.9, can be taken into consideration. As per Ex.A.9, his gross salary was Rs.12,020/-. Several deductions under different heads were noted in Ex.A.9 and his net salary was shown as Rs.3,863/-. No proper explanation was provided by the claimants with regard to the particulars of the several deductions. So neither the gross salary of Rs.12,020/- nor the net salary of Rs.3,863/- can be accepted. Therefore, taking into consideration the statutory deductions like Income Tax, Professional Tax etc., his net salary is fixed at Rs.7,500/-.

To this amount, 30% is added towards future prospects as laid down by the Apex Court in ***Smt.Sarla Verma vs. Delhi Transport Corporation***[2]. The argument of the claimants that agricultural income of the deceased has not been taken into consideration by the Tribunal cannot be countenanced for the reason that lands remain intact even after the death of deceased and on that count, the claimants will not lose any income. At best, they may have to incur some supervisory charges. Thus, the annual income of the deceased comes to Rs.1,17,000/- (Rs.9,750/- x 12). From the aforesaid amount, 1/3rd is deducted towards personal living expenses of the deceased. The net amount which serves the purpose as multiplicand comes to Rs.78,000/-. The deceased was aged 43 years as per Ex.A.2—inquest report and Ex.A.3—PME Report. For this age, the suitable multiplier is '14' as provided in the ***Sarla Verma***'s case (1 supra). Hence, the contention of the claimants that appropriate multiplier is '15' cannot be accepted. Thus the compensation for loss of dependency comes to **Rs.10,92,000/-** (Rs.78,000/- x 14).

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

Loss of dependency	Rs.10,92,000-00
Loss of consortium	Rs. 15,000-00
Loss of estate	Rs. 15,000-00
Funeral and transport expenses	Rs. 3,000-00
Total	Rs.11,25,000-00

So, the compensation is enhanced by **Rs.5,28,500/-** (Rs.11,25,000/- minus Rs.5,96,500/-).

[2] 2009 ACJ 1298 (SC)

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

(i) The compensation is enhanced from **Rs.5,96,500/-** to **Rs.11,25,000/-** with proportionate costs and interest @ 7.5% p.a. from the date of OP till the date of realisation.

(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: 09.09.2016
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