HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.63 of 2009

JUDGMENT:

Aggrieved by the Award dated 02.07.2008 in O.P.No.1634 of 2004 passed by the Chairman, M.A.C.T-cum-VIII Additional District Judge, Nizamabad (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 28.10.2004 at about 4.30 PM, the deceased—Mukka Ramesh was driving his car bearing No.AP 11 011 from Hyderabad towards Siddipet side on Hyderabad—Karimnagar road, and when he reached outskirts of Thimmareddypally village, one lorry bearing No.AP 02 T 4568 being driven by its driver in a rash and negligent manner at high speed came in opposite direction and dashed against the car, due to which the deceased sustained head injury and multiple injuries all over the body and died on the spot. It is averred that accident was occurred due to the fault of the driver of lorry and due to sudden demise of the deceased, the claimants who are his dependants became destitutes. On these pleas, they filed O.P.No.1634 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending lorry and claimed Rs.15,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) The 2nd respondent/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimants to strict proof of the same. It contended that the accident was occurred due to the fault of the deceased and thus prayed to dismiss the O.P

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A8 were marked on behalf of claimants. Ex.B1—policy copy was marked on behalf of respondents.

e) The lower Tribunal on appreciation of both oral and documentary evidence held that accident was occurred on account of rash and negligent driving of the lorry driver of R1 and awarded Rs.4,27,000/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency	Rs. 4,20,000-00
Loss of consortium	Rs. 5,000-00
Funeral expenses	Rs. 2,000-00
Total	Rs. 4,27,000-00

Hence, the appeal by claimants.

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

4) Heard arguments of Sri P.Radhive Reddy, learned counsel for appellants/claimants and Sri I.Mammu Vani, learned counsel for R2/Insurance company. Though notice sent to R1 was served but there is no representation on his behalf, hence treated as heard.

5a) Challenging the compensation as low, learned counsel for appellants/claimants firstly argued that the Tribunal grossly erred in fixing the monthly earnings of the deceased as Rs.3,500/- in spite of claimants placing cogent evidence in the form of Exs.A5 and A6 showing that the deceased was running Automobile shop in Patancheru and earning about Rs.20,000/- per month. In view of such wrong fixation of his income, compensation under the head loss of dependency was drastically reduced, he commented.

b) Secondly, he argued that the Tribunal deducted 1/3rd from the gross earnings of the deceased which is again a wrong assumption. In view of the fact that dependants on deceased were four in number, the Tribunal following the decision in ***Smt. Sarla Verma v. Delhi Transport Corporation***[1] ought to have deducted 1/4th in stead of 1/3rd. By the aforesaid deduction also, he argued, compensation for loss of dependency was plummeted.

c) Nextly, he argued Tribunal awarded grossly low amounts of Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium. In the light of expression of Supreme Court in ***Rajesh v. Rajbir Singh***[2] the claimants are entitled to Rs.25,000/- towards funeral expenses and not less than Rs.1lakh towards consortium and he prayed to award those amounts. He thus prayed to allow the appeal.

6a) In oppugnation, learned counsel for R2/Insurance Company argued that compensation awarded under different heads was just and reasonable and there is no need to interfere. In expatiation, she submitted that though the claimants produced Exs.A5 and A6 in proof of Automobile business of the deceased, however, Ex.A6—business licence form issued by the Gram Panchayat, Patancheru covers the period only from 1st April, 2001 to 31st March, 2004 and thus Exs.A5 and A6 do not specify whether the deceased was running Automobile shop by the date of his death i.e. 28.10.2004. Inspite of this deficiency in evidence, the lower Tribunal liberally accepted that the deceased was running Automobile business by the date of his death. Sofaras his income is concerned, the claimants have not produced cogent evidence like Income Tax and Sales Tax returns to show the annual income of the deceased and therefore, going by the nature of his occupation the Tribunal rightly fixed his income at Rs.3,500/- per month and the claimants cannot harp the same as low, having failed to produce sufficient material relating to his income.

b) Nextly, backing 1/3rd deduction, learned counsel argued that claimants 2 and 3 who are the daughter and son of the deceased are majors and not dependants on the deceased and the 4th claimant who is the mother of the deceased, is not dependent as she is having other children and in that view, the Tribunal was right in deducting 1/3rd. She 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 revisit?"

8) **POINT**: Accident, involvement of car bearing No.AP 11 011 and lorry bearing No. AP 02 T 4568 and death of the deceased are admitted facts. The only controversy is in respect of quantum of compensation awarded by the Tribunal.

a) As per the claimants, the deceased was aged about 42 years and by doing agriculture and also by running Automobile spare parts shop in Patancheru he was earning Rs.20,000/- per month. In proof of the same, they examined PW3 and produced Exs.A5 and A6. PW3 of course deposed as if deceased was running Automobile business and doing agriculture by raising commercial crops like turmeric, sugarcane, vegetable etc. and earning Rs.20,000/- per month. PW3 is said to be resident of Patancheru and he too is doing Automobile business. Be that as it may, it is not known how he knows the deceased and about his occupation, earning etc. He stated that deceased cultivated the land of one Ganga Reddy on lease but he does not know the Survey Numbers. At the out set, the evidence of PW3 does not infuse confidence regarding the deceased cultivating the lands of one Ganga Reddy. If his version is true, nothing prevented the claimants to examine the said Ganga Reddy. The claimants have not produced any lease agreement or the revenue records showing that deceased cultivating his lands. As such, the Tribunal rightly discarded the alleged earnings of the deceased on agriculture and having regard to Exs.A5 and A6 rightly took the earnings of the deceased in Automobile business. The Tribunal fixed his income from Automobile business as Rs.3,500/- which, in my considered view, is low one. It is true that claimants have not produced the Income Tax and Sales Tax particulars showing the income of the deceased in automobile business. Still having regard to the fact that the deceased was running automobile business and high cost of automobile spare parts, it can be said that the deceased would have earned atleast Rs.4,000/- per month in his business.

b) Learned counsel for Insurance Company contended that licence particulars provided under Ex.A6 cover the period upto 31.03.2004 only and those particulars do not show whether he was running automobile shop by the date of his death or not. Since the deceased died within few months after the licence period and there is no contra evidence, it can be believed that he was doing automobile business by the time of his death. So, the monthly income of the deceased is fixed at Rs.4,000/-. Going by the decision of the Apex Court in ***Santosh Devi vs. National Insurance Company Limited***[3], 30% is to be added to his income towards future prospects which makes his monthly income Rs.5,200/- (Rs.4,000/- plus Rs.1,200/-). The gross annual income of the deceased which will serve the purpose as multiplicand comes to Rs.62,400/-. The Tribunal deducted 1/3rd from his gross earnings. However, in view of the fact that four members were depending on the deceased, 1/4th instead of 1/3rd can be deducted from his earnings towards personal expenditure of the deceased. It is true that claimants 2 and 3 are major children of the deceased but they were still students by the time of death of the deceased and thus depending on him. The fourth claimant is concerned, she is the aged mother of the deceased and hence she too can be said to be dependant on him. Thus, net annual contribution of the deceased comes to Rs.46,800/- (Rs.62,400/- x 3/4th).

c) Multiplier is concerned, the deceased was aged 42 years as per Ex.A3 and A4. As per ***Sarla Verma***'s case (1 supra) the appropriate multiplier for his age is '14'. Thus, the compensation for loss of dependency comes to Rs.**6,55,200**/- (Rs.46,800 x 14).

d) Then, following the judgment of the Apex Court in ***Rajesh***'s case (2 supra) a sum of Rs.**25,000**/- is awarded towards compensation for funeral expenses. Going by the fact that the first claimant lost her husband in her middle age, a sum of Rs.**25,000**/- is awarded for loss of consortium.

Thus, the total compensation payable to the claimants under different heads is stated as follows:

Loss of dependency	Rs. 6,55,200-00
Loss of consortium	Rs. 25,000-00
Funeral expenses	Rs. 25,000-00
Total	Rs. 7,05,200-00

At the outset, the compensation is enhanced by Rs.**2,78,200**/- (Rs.7,05,200/- minus Rs.4,27,000/-).

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

a) The compensation is enhanced by **Rs.2,78,200/-**(Rs.7,05,200/- minus Rs.4,27,000/-) with proportionate costs and interest at the rate of 7.5% per annum from the date of OP till the date of realization.

b) Respondents in the OP 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: 01.06.2016

Murthy

---

[1] 2009 ACJ 1298 (SC)

[2] 2013 ACJ 1403 (SC)

[3] 2012 ACJ 1428 (SC)