THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.4512 of 2003

JUDGMENT:

Challenging the quantum of compensation awarded by the Chairman, MACT-cum-IV Additional District Judge, Tirupati in MVOP No.569 of 1999 the claimants have preferred the instant CMA.

2) The factual matrix of the case is thus:

a) The 1st claimant is the wife, 2nd claimant is the son and claimants 3 and 4 are the parents of deceased—S.Subramanyam Naidu. Their case is that on 18.02.1999 at about 4 PM, the deceased along with his sugar cane was travelling in a lorry bearing No.AP 21 U 1456 HGV and when it reached Puttur Nagalapuram main road at Keelagaram tank bund, the driver drove the vehicle in a rash and negligent manner and applied sudden breaks to save she-buffaloes, who came across the road. As a result, the deceased fell down on the road and sustained grievous bleeding injuries. Immediately he was admitted in Government Hospital, Puttur where he succumbed to injuries. On these please the claimants filed M.V.O.P.No.569 of 1999 under Section 166 of Motor Vehicles Act against respondents 1 and 2 who are the owner and insurer of the lorry and claimed Rs.7,99,000/- as compensation.

b) R1/owner set exparte.

c) R2/Insurance Company filed counter and denied the age, occupation and income of the deceased. It contended that driver of 1st respondent was not responsible for the accident which was caused due to act of God. It also contended that deceased travelled in the lorry as fare paid passenger but not as owner of the goods. It further contended that as the 1st respondent violated the terms and conditions of the policy, Insurance Company is not liable to pay any compensation and compensation claimed by the claimants is highly excessive and exorbitant and thus prayed for dismissal of OP.

d) PWs.1 to 3 were examined and Exs.A1 to A6 were marked on behalf of claimants. RW1 was examined and Ex.B1—policy copy was filed on behalf of respondents.

3) The Tribunal on appreciation of evidence both oral and documentary awarded a sum of Rs.2,16,500/- under different heads as follows against respondents 1 and 2.

Loss of dependency	Rs. 1,44,000-00
Loss of consortium	Rs. 15,000-00
Love and affection	Rs. 20,000-00
Loss of amenities of life	Rs. 20,000-00
Loss of expectation of life	Rs. 15,000-00
Transport charges	Rs. 2,500-00
Total	Rs. 2,16,500-00

Hence the instant CMA by the claimants.

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

5) Heard arguments of Sri A.Chandraiah Naidu, learned counsel for appellants and Sri V.Sambasiva Rao, learned counsel for R2/Insurance Company. R1 dismissed for default vide Court order dated 19.11.2015.

6a) Challenging the quantum of compensation as very low and inadequate, learned counsel for appellants/claimants argued that deceased owned 7 acres of land and he used to cultivate 8 acres of land on lease and thereby he was getting annual income of Rs.60,000/- but, however, the Tribunal on the premise that the land would remain intact and his dependants lost his supervision alone, fixed the supervisory charges at a low rate of Rs.1,200/- per month and accordingly computed compensation and thereby compensation for loss of dependency was drastically reduced. He prayed to fix the supervisory charges at a reasonable rate.

b) Nextly, he argued that Tribunal awarded low compensation for loss of consortium and did not award compensation for funeral expenses. He thus prayed to allow the appeal and enhance the compensation suitably.

7) Per contra, learned counsel for R2/Insurance Company argued that claimants have not produced any record showing the deceased owning the land or cultivating the land on lease and even assuming

that he was owning the land and cultivating the land on lease, as rightly observed by the Tribunal, the claimants only lost his personal supervision but not the land or income from the land and therefore, the supervisory charges fixed by the Tribunal at the rate of Rs.1,200/- per month was quite reasonable and there is no need to revise the same. Similarly, compensation fixed under other heads is also just and reasonable and therefore, the appeal is liable to be dismissed.

8) In view of above rival arguments, the point for determination is:

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

9) **<u>POINT</u>**: Loss of dependency is concerned, the Tribunal on the observation that the land would remain intact and claimants only lost the supervision of the deceased, fixed the supervisory charges at Rs.1,200/- per month and accordingly computed the compensation for loss of dependency.

a) Sofaras agricultural land of the deceased is concerned, claimants have not produced any record like title deeds, pattadar pass books, cultivation Adangals etc. They have filed Ex.A1—income certificate said to be issued by MRO, Pichatur wherein it was mentioned that deceased was getting the annual income of Rs.60,000/- from agriculture. The revenue authorities can issue certificate regarding agricultural lands owned by a person but it is highly doubtful as to their authority to issue income certificate. Hence, Tribunal rightly rejected Ex.A1. So, there is no cogent evidence regarding the lands either owned or cultivated by the deceased. In Ex.A3—inquest report the occupation of the deceased was mentioned as cultivation. Therefore, it can be presumed that deceased was owning some lands and getting agricultural income. Except the same there is no other evidence in this regard. As rightly observed by the Tribunal, on the demise of the deceased the land will remain intact and dependants would only be deprived of his personal supervision and therefore, they are entitled to supervisory charges. Having regard to increase in agricultural labour charges, in my view, the Tribunal took a low rate of supervisory charges. Therefore, the supervisory charges at fixed at Rs.1,800/- per month. So, the annual supervisory charges comes to Rs.21,600/- (Rs.1,800/- x 12) and no deduction need be applied from the aforesaid amount as it was not an income earned by the deceased but it represents supervisory charges saved had the deceased alive. Thus, the loss of dependency works out at Rs.**3,24,000/-** (Rs.1,800/- x 12 x 15).

b) Then, compensation for loss of consortium is concerned, considering the fact that 1st claimant lost her husband at her middle age, compensation is enhanced from Rs.15,000/- to Rs.**25,000/-**. Since the Tribunal has not awarded any amount towards funeral expenses a sum of Rs.**25,000/-** is awarded in that regard.

Thus, the total compensation payable to the claimants is as follows:

Loss of dependency	Rs. 3,24,000-00
Loss of consortium	Rs. 25,000-00
Love and affection	Rs. 20,000-00
Loss of amenities of life	Rs. 20,000-00
Loss of expectation of life	Rs. 15,000-00
Transport charges	Rs. 2,500-00
Funeral expenses	Rs. 25,000-00
Total	Rs. 4,31,500-00

So, the compensation is enhanced by **Rs.2,15,000/-** (Rs.4,31,500/- minus Rs.2,16,500/-)

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

(i) The compensation is enhanced from **Rs.2,16,500/-** to **Rs.4,31,500/-** with proportionate costs and interest @ 9% per annum from the date of OP till the date of award and @ 7.5% per annum subsequently.

(ii) Respondents 1 and 2 in the appeal 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 petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 15.12.2016
Murthy