

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1292 of 2009

JUDGMENT:

Aggrieved by the Award dated 17.08.2005 in O.P.No.2184 of 2002 passed by the Chairman, M.A.C.T-cum-District Judge, Nizamabad (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants 1 and 2 are parents of deceased boy—Vollupu Balaraju. Their case is that on 15.10.2002 at about 5.30 AM, when the deceased boy was going by walk from Jangampally bus Stand towards his house on NH7, a lorry bearing No. MP 06/E-2022 being driven by its driver in a rash and negligent manner, dashed behind the deceased, due to which the deceased sustained multiple fracture injuries to the head and died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of the lorry and due to sudden demise of the deceased the claimants who are the parents of the deceased, became destitutes. On these pleas the claimants filed O.P.No.2184 of 2002 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.4,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) R2/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimant to strict proof of the same. It denied that the accident was occurred due to rash and negligent driving by the driver of the lorry. It further contended that the driver of the lorry was not having any valid and subsisting driving license at the time of accident. It finally contended that the compensation claimed is excessive and exorbitant and thus prayed to dismiss the O.P

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. Ex.B1— Policy copy was marked on behalf of respondents.

e) The lower Tribunal considering the evidence, held that accident was occurred on account of rash and negligent driving of the driver of the lorry and awarded lumpsum amount of Rs.2,25,000/- as compensation against respondent Nos.1 and 2 with proportionate costs and interest @ 9% per annum.

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 Venkateshwar Varanasi, learned counsel for appellants/claimants, and Sri T. Ramulu, learned counsel for R2/Insurance company. R1 is

not necessary party vide cause title.

5) Challenging the award, learned counsel for appellants/claimants argued that the Tribunal awarded only a pittance of Rs.2,25,000/- as a lump sum without awarding compensation for loss of future prospects of the deceased and compensation for conventional heads like funeral expenses, loss of love and affection etc. and thereby the compensation was drastically reduced. He thus prayed to allow the appeal and enhance the compensation suitably.

6) Per contra, learned counsel for R2/Insurance Company argued that deceased was only six years old boy and a non-earning member and considering this aspect, Tribunal by following the Apex Court judgment in ***Manju Devi and another v. Musafir Paswan***^[1] has awarded Rs.2,25,000/- which was just and reasonable and there is no need to interfere with the same. He submitted that in fact the claimants deserve much lesser amount. 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 interference?”

8) **POINT:** The accident, involvement of lorry bearing MP 06 E 2022 and death of deceased boy viz., Vollupu

Balaraju are admitted facts. Compensation is concerned, the claimants claimed Rs.4 lakhs on the plea that the deceased was 15 years old boy and by attending stone cutting work he was earning Rs.8,000/- to 10,000/- per month and due to his death they lost his earnings.

a) The Award shows that since the claimants failed to produce cogent evidence regarding the age and income of the deceased boy, Tribunal considering Ex.A3—inquest report and Ex.A4—postmortem report accepted the age of the boy as six years and held that he was a non-earning member. Then, by following the judgment of the Apex Court in ***Manju Devi's*** case (1 supra) wherein for the death of a boy of 13 years compensation of Rs.2,25,000/- was granted, the Tribunal awarded the same amount which is now being impugned.

b) On a careful consideration, I find no merits in the appeal. The deceased was six years old and hence not an earning member. Therefore, his notional income can be taken as Rs.15,000/- per month. By deducting 1/3rd towards his personal and living expenses, his net annual contribution to the family comes to Rs.10,000/-. For his age, multiplier '15' can be taken, in which case the compensation for loss of earnings would come to Rs.1,50,000/- (Rs.10,000/- x 15). So far as compensation for conventional heads such as funeral expenses, loss of estate and loss of love and affection is concerned, an

amount of Rs.25,000/- each under those three heads can be awarded. In which case the total compensation comes to Rs.**2,25,000**/-. So at the outset, the compensation of Rs.2,25,000/- awarded by the Tribunal appears to be just and reasonable, as rightly contended by learned counsel for R2/Insurance Company. Hence, I find no merits in the appeal.

9) In the result, this MACMA filed by the appellants/claimants is dismissed by confirming the Award dt:17.08.2005 passed by the Tribunal in O.P.No.2184 of 2002. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: .06.2016

Murthy

[\[1\]](#) 2005 ACJ 99 (SC)