HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2766 of 2009

JUDGMENT:

Aggrieved by the Award dated 30.12.2008 in M.V.O.P.No.285 of 2008 passed by the Chairman, M.A.C.T-cum-V Additional District Judge, Rayachoty (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 28.06.2007 at about 1.00 pm when the deceased—Pesala Siddaiah along with his cousin was proceeding on his cycle and when they reached four roads junction situated on Yerraguntla-Proddatur by-pass road, one lorry bearing No.AP 04 T 4050 being driven by its driver in a rash and negligent manner at high speed came in opposite direction and dashed against the cycle of the deceased, due to which, the deceased sustained grievous injuries all over the body and thereafter he was at first shifted to Government Hospital, Proddatur, for treatment and thereafter, on the way to Government Hospital, Kurnool, he succumbed to injuries. It is averred that accident was occurred due to rash and negligent driving by 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 M.V.O.P.No.285 of 2008 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 of the vehicle filed Written Statement denying the allegations made in the claim petition and urged to put the claimants in strict proof of the same. He contended that the accident was occurred due to rash and negligent driving of cyclist. He further contended that the lorry was insured with R2—Insurance Company and it has to indemnify the liability of R1, if any. He further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) The 2^{nd} 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 rash and negligent driving of cyclist and thus prayed to dismiss the O.P

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimants. No oral and documentary evidence was adduced 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.3,15,000/- 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. 3,06,000-00
Funeral Expenses	Rs. 2,000-00
Loss of Estate	Rs. 2,500-00
Consortium	Rs. 5,000-00
Total	Rs. 3,15,000-00

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 D. Kodanda Rami Reddy, learned counsel for appellants/claimants and Sri A. Jayanthi, learned counsel for R2/Insurance company. Notice sent to R1 served but no representation on his behalf.

5) (a) Challenging the compensation awarded as low, learned counsel for the appellants/claimants, firstly, argued that the deceased was a young man aged 25 years and he was working as loading and unloading coolie, besides, he was skilled in trapping the pigs and loading in the vehicles. By such work also, he was earning Rs.300/- per day and therefore, the Tribunal ought to have taken his monthly income as Rs.3000/- per month. But, it has erroneously fixed his income as Rs.2250/- per month. Further, the Tribunal has not taken into consideration the future prospects of the deceased. He further argued that there are four claimants depending on the deceased and as per the

decision of Apex Court in ***Smt.Sarla Verma vs. Delhi Transport Corporation***[1]***,*** 1/4th has to be deducted from the gross earning of the deceased, but, the Tribunal committed a folly in deducting 1/3rd. He also argued that the Tribunal has taken '17' as multiplier. As per the above said decision (1 supra), '18' is the correct multiplier for the persons in the age group of 21-25 years and due to all aforesaid errors, the compensation for loss of dependency was drastically plummeted and therefore the same needs to be revised.

b) Nextly, learned counsel argued that the Tribunal awarded very low amounts of Rs.2000/- and Rs.5000/- towards funeral expenses and lost of consortium respectively. As per the decision of Apex Court in ***Rajesh v. Rajbir Singh***[2]***,*** the claimants deserve Rs.25,000/- and Rs.1,00,000/- respectively under the above said heads. He further submitted that in the process of awarding just and reasonable compensation, the Court has power to award more compensation than claimed by the claimants and they are ready to pay additional Court Fee, if necessary. He, thus, prayed to allow the appeal.

6) a) Per contra, learned counsel for respondent/insurance company, while opposing the appeal, argued that except the oral assertions of the claimants, there is no cogent evidence regarding the nature of avocation and earning of the deceased and therefore, the Tribunal rightly fixed his

monthly earning at Rs.2,250/- and there is no need to re-visit the same.

b) Learned counsel further argued that total compensation payable under conventional heads can be fixed at Rs.50,000/-, if at all the Court considers that the amounts awarded under those heads are meager. 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 re-assessment?"

8) **POINT**: Accident, involvement of lorry bearing No. AP 04 T 4050 and death of the deceased--Siddaiah are admitted facts. The bone of contention is with regard to the quantum of compensation. On a careful scrutiny of the facts and evidence on record, I am of the view that the compensation needs to be re-assessed to make it just and reasonable.

9) Loss of dependency is concerned, the Tribunal fixed the monthly income of the deceased as Rs.2,250/- and after deducting 1/3rd therefrom towards his personal expenses and by applying '17' as multiplier arrived at a figure of Rs.3,06,000/-. The deceased was stated to be a loading and unloading coolie. Besides, he was skilled in trapping the pigs and loading them in the vehicles and by such loading, he was earning Rs.300/- per day. The case of the claimants

is that on average the deceased was earning Rs.3000/- per month. As stated supra, though the Tribunal agreed with the occupation of the deceased, fixed his monthly income at Rs.2,250/- per month on the ground that there was no proper evidence regarding his earnings. To this extent, the Tribunal cannot be found fault with. However, as rightly argued by the learned counsel for appellants, the Tribunal has not taken into consideration the future prospects of the deceased. I n **Santosh Devi v. National Insurance Company Limited and others**[3], the Apex Court held that in respect of self employed persons or persons engaged in fixed wages, 30% increase in the total income can be applied towards future prospects. Going by the said dictum, 30% is added to the monthly income of the deceased. The total income comes to Rs.2925/- (Rs.2250 x 130%). The annual income of the deceased which will serve the purpose as multiplicand comes to Rs.35,100/-. Having regard to the fact that four claimants are depending on him and by following the principle laid down in **Sarla Verma**'s case (1 supra), 1/4th only can be deducted from the gross earnings. Thus, the net annual contribution of the deceased to his family comes to Rs.26,325/- (Rs.35,100/- x 1/4th).

10) Then multiplier is concerned, the Tribunal having regard to the age of the deceased as 25 years, selected '17' as multiplier. However, as per the multiplier table provided by the Apex Court in **Sarla Verma's** case (1 supra), '18' is

the appropriate multiplier for the persons in the age group of 21-25 years and so the said multiplier is accepted. Thus, the compensation for loss of dependency comes to Rs.4,73,850/- (Rs.26,325 x 18).

11) Then considering the fact that compensation awarded for funeral expenses as low, the same is enhanced to Rs.25,000/- following the principle laid down in **Rajesh**'s case (2 supra). Similarly, considering the fact that the compensation awarded for loss of consortium is a low one and also considering that the first claimant lost her husband at her young age, compensation for loss of consortium is enhanced to Rs.25,000/-.

12. Thus, the compensation payable to the appellants/claimants under different heads is as below:

Loss of dependency	Rs.	4,73,850-00
Funeral Expenses	Rs.	25,000-00
Loss of Estate	Rs.	2,500-00
Loss of consortium	Rs.	25,000-00
Total	Rs.	5,26,350-00

13. It should be noted that compensation now awarded exceeds the original claim of Rs.4,00,000/- made by the appellants/claimants. However, in fit cases, the Court has power to grant just and reasonable compensation though it exceeds the claim made by the concerned claimants as laid down by the Apex Court in ***Nagappa vs. Gurudayal Singh***[4].

14. In the result, Appeal is allowed and ordered as follows:

(i) The compensation is enhanced by **Rs.2,11,350/- (Rs.5,26,350/- minus Rs.3,15,000/-)** with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

(ii) 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.

(iii) The appellants/claimants are directed to pay the additional Court Fee on Rs.1,26,350/- (Rs.5,26,350 minus Rs.4,00,000/-) within one(1) month from the date of this judgment.

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

U. DURGA PRASAD RAO, J

Date: 02.06.2016

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[1] 2009 ACJ 1298 (SC)

[2] 2013 ACJ 1403 (SC)

[3] 2012 ACJ 1428

[4] 2003 ACJ 12 (SC) (FB)