**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**C.M.A. No.1922 of 2004**

**JUDGMENT:**

Challenging the exoneration of Insurance Company and also the quantum of compensation awarded by the Chairman, MACT-cum-District Judge, Nizamabad in O.P.No.295 of 2001, the claimants have preferred the instant CMA.

2) The factual matrix of the case is thus:

a) On 04.10.2000 at about 8 PM, when the deceased—Syed Jamal was travelling from Mudhole to Chinthalbore in a jeep bearing No.MH 26C 2670 and when it reached near Taroda village, the driver of the jeep drove the same in a rash and negligent manner, due to which the jeep turned turtle. As a result, deceased received serious injuries. Immediately he was shifted to Government Hospital, Nizamabad for treatment where he succumbed to injuries on 23.10.2000. On these pleas, the claimants filed O.P.No.295 of 2001 against respondents 1 and 2 who are the owner and insurer of the jeep and claimed Rs.4 lakhs as compensation.

b) R1/owner remained ex-parte.

c) R2/Insurance Company filed counter and opposed the claim. It contended that the jeep in question was not involved in the accident and R1/owner committed breach of the terms of the policy and therefore, Insurance Company was not liable for compensation. It further contended that compensation claimed was highly excessive and exorbitant. Thus, it prayed for dismissal of OP.

d) The Tribunal on appreciation of evidence both oral and documentary, awarded Rs.83,900/- under different heads against the R1/owner while exonerating R2/Insurance Company, as below:

| | |
|---|---|
| Loss of dependency | Rs. 62,880-00 |
| Funeral expenses | Rs. 2,000-00 |
| Medical expenses | Rs. 19,020-00 |
| Total | Rs. 83,900-00 |

Hence the instant CMA by the claimants.

3) Heard arguments of Sri K.M.Mahender Reddy, learned counsel for appellants and V.Srinivas Rao, learned counsel for R2/Insurance Company. Case against R1 was dismissed for default vide Court Order dt.19.11.2015.

4) Learned counsel for appellants fulminated the Award on three main arguments:

a) Firstly that the Tribunal grossly erred in exonerating the Insurance Company on the observation that the crime Jeep was a private vehicle and it was hired in contravention of the terms of the policy. Learned counsel would argue that Ex.B.1—policy is a comprehensive policy and premium was collected to cover the risk of 10 persons and therefore, Insurance Company cannot avoid its liability. Even assuming that the Jeep was hired in contravention of the terms of the policy, the Tribunal ought to have passed a pay and recover order against the Insurance Company since the policy was in force and premium was paid to cover the risk of passengers.

b) Secondly, challenging the quantum of compensation as low, he argued that the Tribunal committed error in accepting the monthly income of the deceased as Rs.3,000/- and it committed further error in accepting his age as 57 years, instead of 45 years as mentioned in Exs.A.3 and A.4. Due to the aforesaid mistakes, he argued, compensation was drastically reduced. With reference to the income of the deceased, learned counsel argued that the deceased was a fruit vendor and as per Ex.A.8—certificate issued by the agent of Nizamabad Wholesale and Retail Fruit Merchants, the turnover of the deceased was Rs.25,000/- to Rs.30,000/- p.m and in that view, his net income would be not less than Rs.5,000/-. Even otherwise, having regard to the nature of his avocation i.e., fruits business, it can be said that he would reasonably earn a net income of Rs.5,000/- to Rs.6,000/- p.m. In this regard, he placed reliance on ***Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Limited***[1]. He further submitted that reasonable addition should be made to his earnings towards future prospects. He prayed to fix the multiplier basing on the decision of the Apex Court in ***Smt. Sarla Verma vs. Delhi Transport Corporation***[2].

c) Finally, he argued that the Tribunal awarded only Rs.19,000/- towards medical expenditure against the claim of Rs.50,000/- and the same needs to be enhanced. He thus prayed to allow the appeal.

[1] (2014) 2 SCC 735
[2] 2009 ACJ 1298 (SC)

5) Per contra, learned counsel for respondent No.2/Insurance Company while supporting the Award argued that though the policy was a comprehensive one, in view of the violations of the terms of the policy i.e, overloading the vehicle and using it for hire instead of private purpose, the Tribunal rightly exonerated the Insurance Company. Regarding the quantum of compensation, he argued that the compensation awarded was just and reasonable and there is no need to review. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination is:

*"Whether the Award passed by the Tribunal is factually and legally sustainable?"*

7) **<u>POINT</u>**: The accident, involvement of crime Jeep bearing No.MH 26C 2670 and death of deceased are not in dispute. The Tribunal awarded compensation against R.1 alone by exonerating the Insurance Company on the main ground that the vehicle was used for hire purpose in contravention of the terms of the policy. In this context, a perusal of Ex.B.1—policy would show that it is a comprehensive policy issued for the period 23.08.2000 to 22.08.2001. The accident was occurred on 04.10.2000 within the period covered by Ex.B.1—policy. Since the policy was in force, it has now to be seen whether it covers the risk of the deceased and other passengers. In this context, the schedule of premium shows that R.1 paid premium of Rs.500/- to cover the "*risk of 10 persons*" to an extent of Rs.1,00,000/- each. He also paid additional proportionate premium of

Rs.50/- to cover their risk to "*unlimited*" extent. Thus it is clear that the policy was a comprehensive policy and premium was paid to cover the risk of 10 passengers to unlimited extent. However, sofaras the limitations of use is concerned, it was stipulated in Ex.B.1 that the policy does not cover if used for hire or reward. In the instant case, the evidence of PW.1 would reveal that herself, deceased and other passengers traveled in the crime vehicle as hired passengers. So the evidence on record would show that the policy no doubt covers the risk of 10 passengers to unlimited extent if the vehicle was used for private purpose. But, in the instant case, the vehicle was used for hire purpose in contravention of the terms of the policy. In this backdrop, since the policy was in force and covers the risk of the passengers, in the considered view of this Court, instead of exonerating the Insurance Company totally, it can be directed to pay compensation at first and recover later from the insured.

8) Then quantum of compensation is concerned, the Tribunal fixing the income of the deceased as Rs.3,000/- p.m and accepting his age as 57 years and fixing multiplier of 2.62 arrived at the loss of dependency at Rs.62,880/- (Rs.24,000/- x 2.62). The said computation is impugned as discussed supra. The income aspect is concerned, it must be said, there is no cogent evidence regarding the avocation and income of the deceased. While in the claim petition and the evidence of PW.1, the deceased was mentioned as fruit vendor and earning Rs.4,000/- p.m, in Ex.A.3—inquest report it was only mentioned that the deceased was a businessman without giving further details as to the nature of the business. No doubt the

claimants produced Ex.A.8—income certificate said to be issued by the Agent of the Nizamabad Wholesale and Retail Fruit Merchants mentioning that the monthly turnover of the deceased in fruits business as Rs.25,000/- to Rs.30,000/-. However, the claimants have not examined the person who issued Ex.A.8. So at the outset, there is no proper evidence in this regard. Still, the Tribunal accepting him as a fruit vendor fixed his monthly income as Rs.3,000/- i.e, @ Rs.100/- per day. The accident was occurred in the year 2000. Having regard to the time of accident, the income fixed by the Tribunal cannot be termed as unduly low. The decision in ***Syed Sadiq***'s case (1 supra) cited by the appellants/claimants will be of no avail to them. The accident in that case was occurred on 14.02.2008 and the appellant/insured claiming himself as a Vegetable vendor cited his income as Rs.10,000/- p.m. Hon'ble Apex Court having regard to the rising prices in agricultural products fixed his monthly earnings as Rs.6500/- p.m. In our case, the accident was occurred in the year 2000 and taking the economic conditions by then, the fixation of Rs.3,000/- p.m can be said to be reasonable by all means.

a) Then the age of the deceased is concerned, though in Exs.A.3 and A.4, his age was mentioned as 45 years, which was obviously on hearsay information but not based on any documentary proof, his wife admitted in the cross-examination that she was aged 58 years and her husband was elder to her by 2 to 3 years. In that view, the Tribunal has fixed his age as 57 years which cannot be impugned. Following the ***Sarla Verma***'s case (2 supra) '9' can be accepted as multiplier for his age.

b) Sofaras future prospects are concerned, in ***Sarla Verma***'s case (2 supra), the Apex Court held that there shall be no addition where the age of the deceased is more than 50 years. In that view, no addition can be made towards future prospects. So the compensation for loss of dependency comes to **Rs.2,16,000/-** (Rs.2,000/- x 12 x 9).

c) Then medical expenditure is concerned, going by Ex.A.7—medical bills, the Tribunal awarded Rs.19,020/- and hence there is no need to revise the same.

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

| | |
|---|---|
| Loss of dependency | Rs.2,16,000-00 |
| Funeral expenses | Rs. 2,000-00 |
| Medical expenses | Rs. 19,020-00 |
| Total | Rs.2,37,020-00 |

So the compensation is enhanced by **Rs.1,53,120/-** (Rs.2,37,020/- minus Rs.83,900/-).

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

(i) The compensation is enhanced from **Rs.83,900/- to Rs.1,53,120/-.** The original compensation of Rs.83,900/- shall carry interest @ 9% p.a and enhanced compensation of Rs.1,53,120/- shall carry interest @ 7.5% p.a. throughout.

(ii) Respondents 1 and 2 in the O.P shall deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

(iii) Respondent No.2/Insurance Company is directed to pay the compensation at first and then recover the same from the insured-respondent No.1.

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

**U.DURGA PRASAD RAO, J**

Date: 08.12.2016
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