THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1148 of 2009

JUDGMENT:

Aggrieved by the Award dt:29.08.2006 in OP No.1834 of 2002 passed by the Chairman, M.A.C.T-cum-VIII Additional District Judge, at Nizamabad (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 16.10.2002 at about 5:00pm, while the deceased along with her husband i.e, first claimant were travelling on Hero Honda Splendor motorcycle bearing No.AP 25 C 7299 and when they reached Kuprial bus stage on NH-7 Hyderabad to Nagpur road, one Maruti car bearing No.MH 33 A 99 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed against the motorcycle. In the resultant accident, both the couple sustained grievous injuries. They were shifted to Government Area Hospital, Kamareddy and the deceased succumbed to injuries while undergoing treatment. It is averred that the accident was occurred due to rash and negligent driving by the driver of the Maruthi Car. On these pleas, the claimants filed O.P.No.1834 of 2002 under Section 166(1)(A) of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.5,50,000/- as compensation.

b) The 1st respondent remained *exparte*.

c) The 2nd respondent/Insurance Company filed written statement denying the material averments and urged to put the claimants in strict proof of the same. Finally, R2 contended that compensation claimed is excessive and exorbitant and thus prayed to dismiss the OP.

d) During trial, PW.1 was examined and Exs.A1 to A9 were marked on behalf of claimants. Exs.B.1 and B.2 were marked on behalf of respondents.

e) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.1,75,000/- with proportionate costs and interest @ 7.5% p.a. against respondents 1 and 2.

Loss of income		Rs.1,60,000-00
Non-pecuniary damages		Rs. 15,000-00
	Total:	Rs.1,75,000-00

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 K.Vinaya Kumar, learned counsel for appellants/claimants and Smt.A.Jayanthi, learned

counsel for 2nd respondent/ Insurance Company. Notice sent to R.1 was unserved.

5a) Challenging the award as low, learned counsel for appellants/ claimants argued that Tribunal grossly erred in treating the deceased as a non-earning person and fixing her notional income as Rs.15,000/- per annum forgetting the fact the deceased was a beedi roller and earning Rs.4,000/- as shown in Ex.A8 pay certificate. Therefore, the Tribunal ought to have taken her salary as Rs.4,000/- per month or atleast Rs.3,000/- per month and computed compensation for loss of dependency.

b) Nextly, he argued that Tribunal again erred in grating pittance of Rs.15,000/- towards non-pecuniary damages. He argued that going by the decision of Apex Court in ***Rajesh vs. Rajbir Singh and others***[1] the claimants are entitled to Rs.25,000/- towards funeral expenditure and Rs.1 lakh towards loss of consortium and besides they are also entitled to a reasonable compensation for loss of love and affection of the deceased as she is the mother of claimants 2 to 4 who are her minor children. He thus prayed to refix the compensation.

6a) Opposing the appeal, learned counsel for R2/Insurance Company argued that though the claimants pleaded that deceased was a beedi roller, they could not examine the employer of the deceased in proof of Ex.A8—certificate. Therefore, lower Tribunal rightly rejected Ex.A8 and notionally fixed her income at Rs.15,000/- per annum basing on Second Schedule of MV Act and therefore, the claimants cannot found fault with the said fixation.

b) Compensation in respect of other conventional heads is concerned, learned counsel submitted that in all the petitioners may not entitled to more than Rs.50,000/-.

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 enhancement?"

8 a) **POINT**: Accident, involvement of motorcycle bearing No.AP 25 C 7299, Maruti car bearing No.MH 33 A 99 and death of the deceased are not in dispute. The controversy is with regard to adequacy of compensation. Loss of dependency is concerned, the plea of claimants is that deceased was working as beedi roller and earning Rs.6,000/- and in proof thereof they produced Ex.A8—wage certificate. However, the Tribunal refused to consider the same on the well reasoned ground that the claimants have not examined the employer or other persons connected to Ex.A8 in proof of said document. Then, the Tribunal considered the deceased as a non-earning person and notionally fixed her income as Rs.15,000/- going by the Second Schedule of MV Act. It is true that as per the Second Schedule the notional income of a non-earning person is statutorily mentioned as Rs.15,000/-.

However, in ***Lata Wadhwa and others vs. State of Bihar and others***[2] the Honourable Apex Court observed that even in the case of death of a housewife, her multifarious household services can be quantified into money. In that case, the Apex Court has taken the services of the deceased house wife as Rs.3,000/- p.m. In the instant case, the deceased was aged about 38 years and she was the wife of first claimant and mother of claimants 2 to 4 and obviously she had to perform multifarious household activities to manage the family. Therefore, even if her employment as beedi roller cannot be accepted for want of proof, still her household service can be quantified in terms of money for computation of compensation for loss of dependency. Accordingly, her household activities are taken worth Rs.2,000/- per month. So, notional annual income which will serve the purpose as multiplicand comes to Rs.24,000/-. No deduction from the said amount can be applied in view of the fact that in this case her household activities are quantified in terms of money and there is no real income earned by her so as to set apart some amount for herself to meet her personal and living expenses.

b) Then selection of multiplier is concerned, as per the decision of ***Sarla Verma v. Delhi Transport Corporation***[3], '15' is the appropriate multiplier for the persons in the age group of 36 to 40. So, the compensation for loss of dependency comes to Rs.**3,60,000**/- (Rs.24,000/- x 15).

c) Then, the compensation under other conventional heads is concerned, going by the decision in ***Rajesh***'s case (1 supra) the compensation for funeral expenses is awarded at Rs.**25,000**/-. Considering the fact that the first claimant lost his wife in his middle age, compensation for loss of consortium is awarded at Rs.**25,000**/-. Besides, another sum of Rs.**10,000**/- for loss of love and affection and care is awarded for the claimants 2 to 4.

Thus, the total compensation payable to the claimants is stated as below:

Loss of dependency	Rs. 3,60,000-00
Funeral expenses	Rs. 25,000-00
Loss of consortium	Rs. 25,000-00
Loss of love and affection	Rs. 10,000-00
Total:	Rs. 4,20,000-00

Thus, the compensation is enhanced by Rs.**2,45,000**/- (Rs.4,20,000/- minus Rs.1,75,000/-).

9) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

a) The compensation is enhanced by **Rs.2,45,000/-** with costs and interest @ 7.5.% per annum from the date of OP till the date of realisation.

b) Respondent Nos.1 and 2 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: 13.04.2016
Murthy

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[1] 2013 ACJ 1403 SC

[2] (2001) 8 Supreme Court Cases 197

[3] 2009 ACJ 1298 (SC) = (2009) 6SCC 121