;'THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.43 of 2009

JUDGMENT:

Aggrieved by the Award dt:11.01.2007 in M.V.O.P.No.154 of 2005 passed by the Chairman, M.A.C.T-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short "the Tribunal"), the 2nd respondent in OP/National Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the minor claimant is that on 28.11.2004, while she along with her father and mother was going to Shirdi from Secunderabad in Maruthi car bearing No.AP 28 B 9927 and at about 6:30am, when they reached near Kavali village at Mile Stone No.9/456 on NH-9, Medak District, one lorry bearing No.AP 12 T 6780 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed their Maruthi car. In the resultant accident, the father and mother of the claimant died on the spot and she sustained injuries. The minor claimant was deprived of her livelihood due to sudden demise of her parents and was put to mental shock and agony. It is averred that the accident was occurred due to the rash and negligent driving by the driver of offending lorry. On these pleas, the claimant filed M.V.O.P.No.154 of 2005 under Section 166 of Motor

Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.24,00,000/- as compensation for the death of her father against respondents 1 and 2 who are owner and insurer of lorry.

b) R1/owner remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and urged to put her in strict proof of the same. R.2 contended that the accident was occurred not due to rash and negligent driving by the driver of R.1 but due to the negligence of the deceased himself. R.2 denied that the claimant is the dependant of the deceased and that she is their legal heir. Finally, R.2 contended that the compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked and Exs.X1 and X2 were exhibited on behalf of claimants. Policy copy filed by respondent No.2 was marked as Ex.B.1.

e) The Tribunal having regard to the oral and documentary evidence awarded Rs.14,56,000/- as compensation with proportionate costs and future interest at 7.5% p.a. against the respondents 1 and 2

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they arrayed

before the lower Tribunal.

4) Heard arguments of Sri N.S.Bhaskar Rao, learned counsel for appellant/Insurance Company and Sri P.Gangarami Reddy, learned counsel for R1/claimant. R.2 is not necessary party in this appeal vide cause title as he was already set *ex parte* before the lower Tribunal.

5a) Disputing the compensation awarded by the Tribunal as very high and exorbitant, learned counsel for appellant/Insurance Company firstly argued that the Tribunal committed a gross error in taking the monthly income of the deceased as Rs.14,000/-, as there is no legal basis for fixing the said amount. In expatiation, he argued that though the claimants produced Ex.A7—salary certificate purported to be issued by M/s. Intec Group (India) Limited, they have not examined any person concerning to Intec Group in proof of Ex.A7.

b) Nextly, he argued that the Tribunal erred in accepting '13' as multiplier. It ought to have fixed 10.45 as multiplier basing on the decision in ***Bhagwan Das v. Mohd Arif*** [1]. He submitted that due to aforesaid errors compensation for loss of dependency was drastically increased. He thus prayed to allow the appeal and re-fix the compensation.

6) Per contra, learned counsel for R1/claimant supported the award and prayed to dismiss the appeal.

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

"Whether the award passed by the Tribunal is just and reasonable or needs re-consideration?"

8) **<u>POINT</u>**: Accident, involvement of car bearing No.AP 28 B 9927, lorry bearing No.AP 12 T 6780 and death of deceased are admitted facts. The only controversy is with regard to quantum of compensation. The main argument of the counsel for appellant is that the Tribunal totally erred in fixing the income of the deceased by placing implicit reliance on Ex.A7—salary certificate. On a careful scrutiny of facts and evidence, I find some force in the said argument. The compensation fixed by the Tribunal needs revisit for the following discussion.

a) As per claimant, the deceased—Uma Maheswaran was working as Software Engineer and earning Rs.20,000/- per month. It is not pleaded in the OP in which organization he was working. It is needless to emphasize that the burden is on the claimant to prove the avocation and income of the deceased. In Ex.A1—FIR which was lodged within short time after the accident it is mentioned that the deceased was a computer engineer. In Ex.A4—inquest report also the deceased was referred as computer engineer. Therefore, it can be believed that deceased was a computer engineer by profession.

b) Then, coming to Ex.A7—salary certificate it was purported to be issued by Intec Group (India) Limited showing that deceased was paid a gross monthly salary of Rs.20,000/-. As rightly argued by learned counsel for appellant/Insurance Company no person concerned to Intec Group (India) Limited was examined to establish the authencity of Ex.A7. Unfortunately, the Tribunal has not mentioned in its award as to what made it to accept Ex.A7 in the absence of evidence of a responsible employee from Intec Group avouching authencity of Ex.A7. In my view, the Tribunal ought not to have placed implicit reliance on Ex.A7. So, Ex.A7 cannot be made as basis for fixing the income of the deceased. Therefore, reasonable guess work has to be made with regard to income of the deceased basing on his profession i.e. computer engineering. Having regard to his profession and his death in the year 2004, even on the modest estimate one can say that he would earn atleast Rs.10,000/- per month. Therefore, monthly income of the deceased is fixed at Rs.10,000/-.

c) Then, going by the decision of Honourable Apex Court in ***Smt. Sarla Verma v. Delhi Transport Corporation***[2], 30% has to be added towards future prospects as the deceased was 45 years old by the date of accident. Thus, the monthly earnings of the deceased comes to Rs.13,330/- (Rs.10,000/- + Rs.3,300). The gross annual income of the deceased which will serve for the purpose as multiplicand comes to

Rs.1,59,600/- (Rs.13,300 x 12). From the said amount 1/3rd is deducted towards personal expenditure of the deceased. Hence, the balance comes to Rs.1,06,400/- (Rs.1,59,600 x ¾).

d) The lower Tribunal took '13' as multiplier. Having regard to the age of deceased as 45 years, I find no illegality or irregularity in the selection of said multiplier. Hence, the loss of dependency comes to Rs**.13,83,200**/- (Rs.1,06,400 x 13).

e) It is seen that Tribunal has not awarded any compensation for conventional items such as funeral expenses, loss of estate etc. Therefore, a sum of Rs**.25,000**/- is awarded towards funeral expenses following the decision of the Apex Court in ***Rajesh v. Rajbir Singh***[3]***.*** Further, a sum of Rs.**5,000**/- each is awarded for loss of estate and loss of love and affection.

Thus, the total compensation payable to the claimant under different heads is stated as follows:

Loss of dependency	Rs.	13,83,200-00
Funeral expenses	Rs.	25,000-00
Loss of estate	Rs.	5,000-00
Loss of love and affection	Rs.	5,000-00
Total	Rs.	14,18,200-00

At the out set, the compensation is reduced from Rs.14,56,000/- to Rs.14,18,200/- (Rs.37,800/-).

9) In the result, this MACMA is partly allowed and ordered as follows:

a) The compensation is reduced from Rs.14,56,000/- to Rs.14,18,200/- (Rs.37,800/-).

b) The respondents in the OP are directed to pay the reduced compensation amount with proportionate costs and interest at the rate of 7.5% per annum from the date of OP till the date of realization 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: 01.06.2016
Murthy

[1] 1987 ACJ 1052

[2] 2009 ACJ 1298 (SC)

[3] 2013 ACJ 1403 (SC)