THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

MACMA MP No.5657 of 2011

IN/AND

MACMA No.2384 of 2016

COMMON JUDGMENT:

Aggrieved by the Award dt. 27.01.2011 in O.P.No.1432 of 2007 on the file of M.A.C.T-cum-III Addl. District Judge (FTC), Ranga Reddy District at L.B.Nagar(for short 'the Tribunal'), the appellants/claimants preferred the instant appeal. As there is a delay of 179 days in filing the appeal, they filed M.A.C.M.A.M.P.No.5657 of 2011 under Section 5 of Limitation Act, to condone the delay and register the appeal and accordingly, it is allowed and the delay of 179 days in filing the appeal is condoned.

2. Heard arguments of Sri K. Venkat Ram Reddy, learned counsel for appellants/claimants and Sri A.V.K.S Prasad, learned counsel for respondent No.2/insurance company. Notice sent to R1 was served, but there is no representation on his behalf and hence treated as heard.

3) At the request of both sides, the main appeal is disposed off at the admission stage after condoning the delay of 179 days in filing the appeal.

4) The factual matrix of the case is thus:

a) On 18.09.2007 at about 09.00 pm, the deceased —Kappari Sarappa went to Kandukur X Road to purchase bidies and when he was crossing the road after purchasing the bidies, a DCM vehicle bearing No.AP 09 Y

3118 being driven by its driver in a rash and negligent manner dashed against the deceased. In the resultant accident, the deceased received multiple injuries and died on the spot. It is averred that the accident was occurred due to the negligence of the driver of DCM Van and due to sudden demise of deceased, the claimants became destitutes. On these averments, the claimants, who are wife, children and mother of the deceased, filed O.P.No.1432 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 and 2, who are the owner and insurer of the vehicle and claimed Rs.5,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1/Owner of Crime vehicle, filed counter denying the averments in the claim petition and urged to put the claimants in strict proof of the same. He stated that the crime vehicle 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) Respondent No.2/Insurance Company denied all the material averments made in the petition and urged to put the claimants in strict proof of the same. It contended that the accident was occurred due to the negligence of the deceased, who suddenly tried to cross the road without observing the vehicles, and as such, R.2 is not liable to pay any compensation. It further contended that the compensation claimed is excessive 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 respondents, Rw.1 was examined and Exs. B.1 and B.2 were marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.3,94,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of dependency	Rs. 3,84,000-00
Funeral Expenses	Rs. 05,000-00
Transport Charges	Rs. 05,000-00
Total	Rs. 3,94,000-00

Hence, the appeal by the claimants/appellants.

4) The parties in this appeal are referred to as they stood before the Tribunal.

5) Challenging the Award, first argument of learned counsel for appellants/claimants is that, in the instant case, the total number of dependants are six in number and therefore, the Tribunal ought to have deducted 1/4th

instead of 1/3rd from the gross earnings of the deceased for computation of compensation for loss of dependency and in view of the said mistake, the compensation was drastically reduced.

6) Secondly, he argued that the Tribunal failed to award compensation for conventional items i.e., loss of consortium and loss of estate and prayed to grant compensation.

7) Thirdly, he argued that the Tribunal granted meager amount of Rs.5000/- towards funeral charges.

He, thus, prayed to allow the appeal and enhance the compensation suitably.

8) Per contra, learned counsel for respondent No.2/insurance company argued that the compensation awarded under different heads is just and reasonable and there is no need to revise the same.

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

'*Whether the compensation awarded by the Tribunal is just and reasonable or needs interference of this Court?*

10. **POINT**: Accident, involvement of DCM vehicle bearing No. AP 09 Y 3118 and the death of deceased are not in dispute. Quantum of compensation is only under challenge. As can be seen, the Tribunal has fixed the income of the deceased as Rs.3000/- and by deducting 1/3rd there from and applying '16' as multiplier,

arrived at the loss of dependency as Rs.3,84,000(Rs.2,000 X 12 X 16). The dependants of the deceased are six in number. Therefore, following dictum in **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another**[1], ¼ instead of 1/3 is to be deducted. Hence, the compensation for loss of dependency is calculated as below.

11. The gross annual income of the deceased comes to Rs.36,000/-(Rs.3000 x 12). Deducting 1/4th, the net annual contribution comes to Rs.27,000/-. The deceased was said to be in the age group of 35 to 40 years and the Tribunal has taken '16' as multiplier. However, as per the dictum of ***Sarla Verma*** the appropriate multiplier for the said age group is '15'. Therefore, the said multiplier is accepted. Thus, the loss of dependency comes to Rs.4,05,000/- (Rs.27,000 X 15).

12. Then, it is seen that the Tribunal failed to award compensation on conventional items like loss of consortium and loss of estate. Therefore, a sum of Rs.15,000/- is awarded towards loss of estate and considering that the first claimant lost her husband at her prime youth, an amount of Rs.25,000/- is awarded towards loss of consortium. Similarly, considering that the amount granted towards funeral expenses is low, the same is enhanced to Rs.25,000/- following the decision reported in ***Rajesh and others V. Rajbir Singh and***

Others[2]***.*** Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs. 04.05,000-00
Loss of estate	Rs. 15,000-00
Loss of consortium	Rs. 25,000-00
Funeral Expenses	Rs. 25,000-00
Transport Charges	Rs. 05,000-00

Total	Rs.4,75,000-00
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13. In view of the above discussion, MACMA M.P.No.5657 of 2011, which is filed for condoning the delay of 179 days in filing the appeal, is allowed and MACMA (SR) No. 51639 of 2011 is partly allowed and ordered as follows:

a) The compensation is enhanced by Rs.81,000 (Rs.4,75,000/- minus Rs.3,94,000/- with proportionate costs and interest at 7.5% p.a., from the date of OP till the date of realization; and

b) Respondents in the OP are directed to deposit the compensation amount within two months from the date of this Judgment, failing which, execution can be taken against them.

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

U. DURGA PRASAD RAO, J

Date: 13.07.2016
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THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

MACMA MP No.5657 of 2011

IN/AND

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Dt.13.07.2016

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[1] (2009)6 SCC 121

[2] (2013) 9 SCC 54