THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1018 of 2009

JUDGMENT:

Aggrieved by the Award dt:29.12.2008 in MVOP No.576 of 2007 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The first claimant is the wife, claimants 2 and 3 are children of the deceased—Kulli Eswaraiah. Their case is that when the deceased was returning to his village Thippireddipalli after unloading tomatoes at Tirupathi in his goods Auto bearing No.AP 04 V 6632 and on 14.01.2007 at about 1:00am, on the way when the deceased reached near Madhavarampadu, one Lorry bearing No.AP 04 V 1383 being driven by its driver in a rash and negligent manner and at high speed, came in opposite direction without any indication, dashed against the auto and thereby, the deceased fell down from the auto and succumbed to injuries. It is averred that the accident was occurred due to rash and negligent driving by the driver of the lorry. On these pleas, the claimants filed M.V.O.P.No.576 of 2007 under Section 166 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.6,00,000/- as compensation.

b) The 1st respondent remained *exparte*.

c) The 2^{nd} respondent/Insurance Company filed written statement denying the material averments and urged to put the claimants in strict proof of the same. R2 contended that the O.P is bad for non-joinder of necessary parties i.e, owner and insurer of the Auto. Finally, R2 contended that compensation claimed is excessive and exorbitant and thus prayed to dismiss the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A4 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.4,40,000/- with proportionate costs and interest @ 6% p.a. against respondents 1 and 2 under different heads as below:

Loss of dependency	Rs. 4,20,000-00
Loss of estate	Rs. 15,000-00
Funeral expenses	Rs. 2,000-00
Loss of consortium	Rs. 3,000-00
Total:	Rs. 4,40,000-00

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 V.Venkata Rami Reddy, learned counsel for 2nd respondent/Insurance Company. Notice sent to R.1 not yet returned.

5a) Challenging the quantum of compensation as low, learned counsel for appellants/claimants firstly argued that Tribunal erred in fixing monthly income of the deceased as Rs.3,500/- in spite of the fact that he was the owner-cum-driver of the auto and earning Rs.15,000/- per month and due to the said wrong fixation, the compensation for loss of future earnings was drastically reduced.

b) Secondly, learned counsel argued that Tribunal granted very low amounts for funeral expenses and loss of consortium and the claimants deserve more amounts under those heads in view of the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and Others***[1]***.*** Learned counsel thus prayed to allow the appeal and suitably enhance the compensation.

6) In oppugnation, learned counsel for R2/Insurance Company supported the judgment and 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 interference?"

8) **POINT:** Accident, involvement of lorry bearing No.AP 04 V

1383 and auto bearing No.AP 04 V 6632 and death of the deceased are not in dispute. It may be noted that before the lower Tribunal, the Insurance Company seems to have contended that lorry in question was not involved in the accident and the said contention was negatived by the Tribunal basing on the evidence of PW2—eyewitness who travelled in the goods auto and lodged FIR and also basing on the evidence of PW3 who is none other than the driver of the offending lorry and as no appeal is preferred by the Insurance Company against the said finding, there is no controversy regarding involvement of the lorry in the accident in the appeal. Hence the appeal is confined to the adequacy of compensation.

9) The first argument is with regard to fixation of monthly income of the deceased by the Tribunal. The award shows that before Tribunal the claimants pleaded that the deceased was owner-cum-driver of the goods auto and earning Rs.15,000/- per month. The Tribunal basing on the evidence of PW2, though agreed that the deceased was driver of the auto, it did not approve that the deceased was the owner of the auto on the observation that the claimants failed to produce Registration Certificate of the auto showing deceased was its owner. Going by his auto driving profession the Tribunal then notionally fixed his income as Rs.3,500/- per month and deducting 1/3rd towards personal expenses and then multiplying his balance annual amount with multiplier '15' arrived the loss of dependency at Rs.4,20,000/- (28,000 x 15).

10) On perusal of the record, I am constrained to hold that Tribunal committed error in fixing the monthly income of the deceased. It is true that as observed by the Tribunal, the claimants have not produced RC book to establish that deceased was the owner of the auto bearing No.AP 04 V 6632. However, we have on record the other reliable evidence establishing his ownership. PW2 in his evidence clearly deposed that on 13.01.2007 the deceased loaded tomatoes in his carrier auto rickshaw bearing No.AP 04 V 6632 and this witness and one Sanjeevappa travelled in the auto as coolies to unload tomatoes at Tirupati. This part of his evidence was not challenged by the Insurance Company. So, the uncontroverted evidence of PW2 gives as indication that the deceased was the owner-cum-driver of auto bearing No. AP 04 V 6632. Besides this, PW2 gave the report to police within short after the accident basing on which, Ex.A1—FIR was registered. In his report also PW2 clearly mentioned that deceased—Eswaraiah loaded tomatoes in his own carrier auto bearing No. AP 04 V 6632 and drove the vehicle to Tirupati. Ex.A1 being the earliest version immediately after the accident, no manipulation regarding the ownership of the vehicle can be imputed, in my considered view. Therefore, besides the oral evidence of PW2 in the Court, his earliest version after the accident in the form of Ex.A1 clinchingly shows that deceased was the owner-cum-driver of goods auto.

11a) Now, coming to the earnings of the deceased, the Tribunal only considered him as driver and notionally fixed his earnings as Rs.3,500/- and therefore this fixation cannot be accepted. Since deceased was the owner-cum-driver he need not pay any salary to third party driver and to that extent he saves the amount. He has to bear only oil and maintenance charges of the auto and the remaining amount he can contribute to his family. The record shows that deceased used to undertake long trips to carry goods in his vehicle and therefore, it can be safely presumed that he was earning decent amount. In that view, his daily income is fixed at Rs.200/- His monthly income comes to Rs.6,000/- per month. Deducting Rs.1,500/- for oil and other maintenance charges, he would be able to save atleast Rs.4,500/- per month to spend on his family. Therefore, I am inclined to take his net monthly income as Rs.4,500/-. His annual income which serve the purpose for multiplicand comes to Rs.54,000/- (Rs.4,500 x 12). Deducing 1/3rd towards his personal expenditure, his net contribution to his family comes to Rs.36,000/- (Rs.54,000/- minus Rs.18,000/-). The Tribunal rightly accepted '15' as multiplier. So, the loss of dependency comes to Rs.**5,40,000**/- (Rs.36,000/- x 15).

b) Then, the Tribunal awarded Rs.2,000/- towards funeral and Rs.3,000/- towards loss of consortium which amounts, in my considered view, are low. Considering the decision in ***Rajesh***'s case (1 supra) and also considering the fact that deceased died in his middle age, loss of consortium is enhanced to Rs.**20,000**/- and similarly compensation for funeral expenses is enhanced to Rs.**25,000**/-.

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

Loss of dependency	Rs. 5,40,000-00
Loss of estate	Rs. 15,000-00
Funeral expenses	Rs. 25,000-00
Loss of consortium	Rs. 20,000-00
Total:	Rs. 6,00,000-00

Thus, the compensation is enhanced by Rs.**1,60,000**/- (Rs.6,00,000/- minus Rs.4,40,000/-).

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

a) The compensation is enhanced by **Rs.1,60,000/-** with costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a from the date of O.P till the date of realization.

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: 11.04.2016
Murthy

[1] 2013ACJ 1403 (SC)