

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.392 of 2009

JUDGMENT:

Aggrieved by the Award dt.11.03.2004 in M.V.O.P.No.137 of 2001 passed by the III Additional District Judge-cum-Chairman, M.A.C.T, Kakinada(for short “the Tribunal”), the claimants preferred the instant appeal.

2) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

3) The factual matrix of the case is thus:

a) The case of the claimants is that on 14.12.2000, the deceased—Batcha Sri Ramalingeswara Swami along with his father—Veerabhadru was proceeding to old bus stand from Government General Hospital, Kakinada to go to their native place Aryavatam and when they reached near Ambedkar Bhavan, Kakinada, one lorry bearing No.AP 31 V 3499 being driven by its driver i.e, 1st respondent in a rash and negligent manner and dashed against the deceased and his father. In the resultant accident, the deceased died on the spot whereas his father sustained multiple grievous injuries and succumbed to injuries while undergoing treatment. It is averred that the accident was occurred due to the fault of the driver of offending lorry. On these pleas, the claimants filed M.V.O.P.No.137 of 2001 under Section 166 of Motor Vehicles Act (for short MV Act)

and claimed Rs.1,10,000/- as compensation against respondents 1 to 3, who are driver, owner and insurer of the offending lorry.

- b) R.1 remained *ex parte*.
- c) Respondent No.3 filed written statement denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. It further contended that the accident was occurred due to negligence of the deceased only and there was no negligence on the part of the 1st respondent. Finally, R.3 contended that the compensation claimed by the claimants is highly excessive and exorbitant and thus prayed to dismiss the O.P.
- d) Respondent No.2 adopted the written statement filed by R.3.
- e) During trial, PWs.1 to 3 were examined and Exs.A1 to A6 were marked on behalf of claimants. Ex.B1—policy copy was marked on behalf of respondents.
- f) The Tribunal after considering the evidence on record held that the driver of the lorry was responsible for the accident and awarded compensation of Rs.60,000/- with proportionate costs and interest @ 9% p.a. under different heads as follows:

Loss of dependency	Rs. 57,000.00
Transportation & Funeral expenses	Rs. 3,000.00

Total	Rs. 60,000.00

Hence, the appeal by claimants.

4) Heard arguments of Sri N.Siva Reddy, learned counsel for appellants/ claimants and Sri G.Purushotham Rao, learned counsel for respondent No.3/ Insurance Company. Case against R.1 and R.2 was dismissed for default vide Court Order dt.21.10.2008.

5) Challenging the Award as low and inadequate, learned counsel for appellants/claimants argued that it was a case of death of 12 years old boy and having regard to his future prospects, the Tribunal ought to have fixed his notional income as Rs.15,000/- p.a and computed compensation but awarded a meagre amount of Rs.60,000/-. He thus prayed to award just and reasonable compensation.

6) Per contra, learned counsel for 3rd respondent/Insurance Company supported the Award and submitted that the compensation awarded under different heads was just and reasonable and there is no need to revisit the same.

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

“Whether the compensation awarded by the lower Tribunal is just and reasonable?”

8) **POINT:** The Accident, involvement of lorry bearing No.AP 31 V 3499 and death of deceased are not in dispute.

a) As can be seen from the record, it is a case of death of a

minor boy—Batcha Sri Ramalingeswara Swami. As per Ex.A.2—post-mortem certificate, the boy was aged 12 years by the time of his death. Having regard to it, the Tribunal has taken an amount of Rs.50,000/- and added @ Rs.1,000/- for each year, over and above five years of age and arrived at Rs.57,000/- towards loss of dependency. To this an amount, the Tribunal added Rs.3,000/- towards funeral and transportation charges. Hence, the total compensation awarded comes to Rs.60,000/-.

b) On a careful consideration, this Court is of the view that the compensation awarded is a meagre one and needs suitable re-appreciation. In the case of ***Lata Wadhwa and others vs. State of Bihar and others***^[1], the Hon'ble Apex Court happened to consider the method of granting compensation in the cases of child deaths due to accidents. In that case, the Court divided the children into two age groups i.e, children of the age group between 5 to 10 years for whom fixed compensation of Rs.1,50,000/- plus Rs.50,000/- towards conventional figure, totalling Rs.2,00,000/- was awarded. The other children were set the age group of 10 to 15 years and considering that in that case those group of students were studying Class VI to X and children of the employees of the TISCO, awarded compensation of Rs.4,10,000/-.

c) Coming to the instant case, the deceased was aged 12 years at the time of accident. His father who also died in the same accident was a toddy tapper. Considering the background of the boy and for lack of educational record, it appears that an

amount of Rs.2,00,000/- as awarded by the Apex Court for the children in the age group of 5 to 10 years in that case, would meet the ends of justice in the instant case.

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

- a) The compensation is enhanced from **Rs.60,000/-** to **Rs.2,00,000/-** with proportionate costs. The enhanced compensation shall carry interest @ 7.5% p.a. from the date of OP till the date of realisation. Whereas the original compensation shall carry interest @ 9 % p.a.
- b) The respondents 1 to 3 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.
- c) The appellants/claimants are directed to pay the additional Court Fee on Rs.1,40,000/- (Rs.2,00,000/- minus Rs.60,000/-) within one (1) month from the date of this judgment.

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

U. DURGA PRASAD RAO, J

Date: 15.07.2016

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[\[1\]](#) AIR 2001 SC 3218