THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.988 of 2009

JUDGMENT:

Aggrieved by the Award dated 12.12.2007 in O.P.No.234 of 2006 passed by the Chairman, MACT-cum- District Judge, Nizamabad (for short "the Tribunal") the 2nd respondent in OP/Oriental Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 29.03.2006 at about 9.30 PM, the deceased—Douthe Mogulaji @ Mogulaiah was driving the auto bearing No.AP 25 U 3825 from Bodhan towards Banswada and when the auto reached near Bilya Naik Thanda sub-station, a van bearing No.AP 25 U 6084 being driven by its driver in a rash and negligent manner and at high speed came in opposite direction and dashed against front portion of the auto, due to which the deceased sustained fracture of skull and other multiple injuries and died on the spot. It is averred that the accident was occurred due to the fault of driver of the offending van. On these pleas, the claimants filed O.P.No.234 of 2006 under Section 166 of Motor Vehicles Act, 1988(for short "M.V.Act") and claimed Rs.10,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending van.

b) R1/owner remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter and contended that there is no negligence on the part of driver of the van and the auto driver was responsible for the accident. It denied the age, avocation and income of the deceased. R2 also contended that petition is bad for non-joinder of necessary parties. Finally, R2 contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A10 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) The Tribunal considering the oral and documentary evidence held that driver of the van was responsible for the accident and awarded Rs.8,36,000/- with proportionate costs and simple interest at 7.5% p.a. against respondents 1 and 2 under different heads as follows:

Loss of dependency	Rs. 8,16,000-00
Loss of consortium	Rs. 15,000-00
Transport and funeral expenses	Rs. 5,000-00
Total:	Rs. 8,36,000-00

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri Bathula Raj Kiran, learned counsel for appellant/Insurance Company and Sri P.Radhiv Reddy, learned counsel for R1 to R7/claimants. Notice sent to R8/owner not yet returned.

5 a) Challenging the award learned counsel for appellant/Insurance Company firstly argued that the deceased who was driving the auto himself was responsible for the accident as he drove the vehicle in a rash and negligent manner and at high speed in order to reach his village early in the night and thereby went and dashed the opposite coming van and the police have charge-sheeted both the drivers and in that view of the matter the Tribunal ought not to have fixed liability on the driver of the van and ought not to have awarded compensation against owner and insurer of the van. The Tribunal ought to have dismissed the O.P for non-joinder of the owner and insurer of the auto.

b) Secondly he argued that the compensation awarded under different heads is highly excessive and exorbitant. In expatiation, he argued that the Tribunal projected the income of the deceased at a high figure of Rs.6,000/- though there is no cogent evidence with regard to his earnings as auto driver and also his cultivation of the lands. Due to this error, the compensation was highly escalated.

c) Nextly he argued that the parents and sister of the deceased are not the dependants of the deceased as the father is the earning member and therefore, the Tribunal ought not to have granted compensation to them. He thus prayed to allow the appeal and dismiss the O.P or reduce the compensation suitably.

6) Per contra, learned counsel for respondents/claimants supported the award and argued that in fact compensation awarded under different heads was a low amount and therefore, there is no need to further reduce the same. Learned counsel argued that there are altogether 6 persons depending on the deceased and as such the Tribunal ought to have deducted 1/4th instead of 1/3rd from the gross earnings of the deceased. He further argued that compensation awarded under the head loss of consortium and funeral expenses is very low. Finally, he argued that the deceased was the owner-cum-driver of the ill-fated auto and therefore, the Tribunal rightly took his daily earnings as Rs.200/-. He thus 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 factually and legally sustainable?"

8) **POINT**: The accident, involvement of auto bearing No.AP

25 U 3825 and van bearing No.AP 25 U 6084 and death of deceased are all admitted facts.

9) The first contention of the appellant is that the accident was occurred due to the fault of the deceased himself and as such the Tribunal ought to have dismissed the O.P. On perusal of the facts and evidence, I find no much conviction in this argument. The claimants examined PW.2, who travelled along with the deceased in the auto to establish the fault of the van driver. In his evidence PW.2 clearly deposed that on the night of 29.03.2006 at about 9:30pm they were proceeding in the auto driven by the deceased and when the auto reached near Sub-Station, the offending van came in the opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed their auto and thereby the deceased sustained injuries and died on the spot. In the cross-examination he stated that the auto was proceeding from Bodhan to Tadgur and four persons were traveling in the auto and the accident was occurred at 9:30pm. He specifically stated that the van hit on the left side of the auto. He further stated that there is a turning at the place of accident. He denied the suggestion that at the time of accident the auto was on the right side of the road and the deceased was driving the auto in a rash and negligent manner at high speed in order to reach home early. He denied the further suggestion that the auto driver was responsible for the accident.

a) A perusal of the Ex.A.1—FIR shows that PW.2 was referred as one of the passengers in the auto. Therefore, his evidence assumes importance to decide the fault of either driver. As can be seen, PW.2 clearly deposed that the van came in the opposite direction at high speed and dashed on the left side of the auto and thus caused the accident. It is not established in the cross-examination that the PW.2 is any way related or connected to the deceased to speak falsehood. Therefore, his evidence can be accepted to be true. In contrast, though the appellant/Insurance Company contended that the deceased was at fault, it did not adduce any evidence before the lower Tribunal to establish this fact. Similarly though it contended that the police have charge-sheeted both the drivers but it did not produce copy of the charge-sheet. Considering all these aspects, the lower Tribunal rightly held that the van driver was at fault. Therefore, it is preposterous for appellant to contend in this appeal that the deceased was responsible for the accident and the O.P is bad for non-joinder of the owner and insurer of the auto.

10) The next contention of the appellant is with regard to the quantum of compensation. On analysis of the evidence I find no much force in this argument also. The Tribunal having regard to the evidence produced by the claimants such as Ex.A.4—driving licence of the deceased, Ex.A.5—copy of R.C book and Ex.A.6—copy of permit, came to conclusion that the deceased was owning an auto and making living by running the same. It must be noted that though the claimants

examined PW.3—the Sarpanch and produced Ex.A.9—Income Certificate, the Tribunal categorically discarded the said evidence on the ground that the Sarpanch was not competent to issue the income certificate. Thus the Tribunal considered the income of the deceased in plying the auto only and thus fixed his income as Rs.6,000/- p.m and deducted 1/3rd towards his personal expenditure. The said fixation is reasonable having regard to the facts of the case. So the argument of the appellant that the income of the deceased was fixed at a high figure cannot be accepted. Then the Tribunal having considered the age of the deceased as 35 years, accepted '17' as multiplier and the same is also impeccable. Accordingly, the Tribunal arrived the loss of dependency at Rs.8,16,000/- (Rs.4,000 x 12 x 17). The Tribunal awarded Rs.15,000/- towards loss of consortium and Rs.5,000/- towards transportation and funeral expenses. Thus in all respects the amount awarded by the Tribunal was just and reasonable and there is no excessiveness in it. It is true that the respondents/claimants contended that the compensation awarded is low. However, their contention cannot be accepted for the reason that they have not preferred any independent appeal or cross objections.

11) The last contention of the appellant is that the parents and sister of the deceased are not entitled to compensation as the father is an earning member. It must be noted that compensation under the M.V. Act is awarded to the legal

representatives of the deceased and dependency is not the sole criteria.

So at the outset I find no merits in the appeal.

12) In the result, this appeal filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in O.P. No.234 of 2006. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 30.03.2016
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