THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.85 of 2009

JUDGMENT:

Aggrieved by the Award dated 24.03.2008 in M.V.O.P.No.1513 of 2006 passed by the Chairman, M.A.C.T-cum-Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blasting Case-cum-XXIII Additional Chief Judge, Hyderabad, (for short "Tribunal"), the second respondent—New India Assurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on the fateful day, when the deceased—Deen Dayal Garg was proceeding on his scooter bearing AP 10C 1274 from his house at D.V.Colony, Secunderabad to Nallagutta on his regular duty and when he reached near Sai Baba Temple, Minister Road, Secunderabad, a Maruthi Car bearing No.AP 09 1462 being driven by its driver in a rash and negligent manner, dashed against his scooter. In the resultant accident, the deceased received bleeding injuries. Immediately he was admitted in Krishna Institute of Medical Sciences, Secunderabad for treatment and thereafter he was shifted to Lakshmi Neuro Centre and afterwards he was shifted to Mediciti Hospital, Hyderabad for better treatment and considerable amount was spent. It is averred that the accident was occurred due to the rash and negligent driving of the crime vehicle. On these pleas, the claimants filed M.V.O.P.No.1513 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondents 1 and 2, who are the owner and insurer of Maruthi Car and claimed Rs.20,86,292/- as compensation.

b) R1—owner of Maruthi car remained ex-parte.

c) Respondent No.2—Insurance Company filed counter and opposed the petition contending that accident was not occurred due to the rash and negligent driving car driver. R2 further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial, PWs.1 to 10 were examined and Exs.A1 to A41 were marked on behalf of claimants. Policy copy produced by R.2 was marked as Ex.B.1 on behalf of respondents.

e) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.16,79,869/- with costs and interest at 7.5% p.a. against respondent Nos.1 and 2.

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Smt. I.Mammuvani, learned counsel for appellant/Insurance Company and Sri Pramod Kumar Kedia, learned counsel for respondents 1 and 2/claimants. Though notice on R3/owner of car was served but there is no representation on his behalf, hence treated as heard.

5) Challenging the award learned counsel for appellant/Insurance Company vehemently contended that the Tribunal erred in awarding huge compensation of Rs.16,79,869/- without there being any proper evidence supporting the claim under different heads. In expatiation, learned counsel argued that Tribunal awarded Rs.6,75,000/- towards loss of dependency taking the notional income of the deceased as Rs.10,000/- per month and fixing '8' as multiplier. She vehemently argued that the Tribunal was incorrect in fixing the monthly income of the deceased as Rs.10,000/- because PWs.2 and 3 who deposed that deceased was working as part-time accountant in their firms and they were paying Rs.3,000/- and Rs.6,650/- respectively per month, did not produce any documentary proof like acquittance registers or account books in support of their evidence. Despite the same the Tribunal on their sheer oral evidence fixed monthly income of the deceased as Rs.10,000/-. She submitted that having regard to the accountant profession of the deceased, the Tribunal ought to have fixed his

monthly income at Rs.5,000/- or Rs.6,000/- but not at an exorbitant scale of Rs.10,000/-. Nextly, learned counsel argued that the Tribunal fixed a high multiplier of '8' for the age of the deceased which was 56 years. In view of the aforesaid errors, compensation for loss of dependency was sored high. She thus prayed to allow the appeal and reduce the compensation suitably.

6) Per contra, while supporting the award, learned counsel for respondents/claimants argued that in fact the compensation awarded for loss of dependency was too low for the main reason that the Tribunal failed to take into consideration the future prospects of the deceased and further, the Tribunal awarded meagre amounts towards funeral expenses, loss of consortium etc. and therefore, the compensation was drastically reduced and the same need not be further reduced. Learned counsel argued that PWs.2 and 3 engaged the services of the deceased for preparing their accounts and basing on their evidence the Tribunal rightly fixed the monthly income of the deceased as Rs.10,000/-. He thus prayed to dismiss the appeal.

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

"Whether compensation awarded by the Tribunal is just and reasonable or needs interference?"

8a) **POINT**: Accident, involvement of car bearing No.AP 09 1462, scooter bearing No.AP 10C 1274 and death of the deceased are admitted facts. The bone of contention is quantum of compensation awarded by the Tribunal. The first contention of the appellant is that Tribunal erred in accepting the monthly income of the deceased as Rs.10,000/-. On a careful perusal of the evidence, I am unable to accept this contention. The plea of the claimants in the OP is that the deceased was a part-time accountant and working in two different private firms i.e. Sumit Industrial Corporation and Sree Shakthi Industrial Products. PWs.2 and 3 affirmed this fact in their evidence. PW2 who is the proprietor of Sumit Industrial Corporation stated that deceased worked as part-time accountant in their firm and he used to pay Rs.3,000/- per month. He confirmed about Ex.A33—salary certificate. Similarly, PW3 who is the Manager of Sree Shakthi Industries deposed that deceased worked as accountant in their firm and he was paid Rs.6,650/- per month. He too confirmed Ex.A34—salary certificate. It is true that PWs.2 and 3 have not produced acquittance registers in proof of Exs.A33 and 34. However, on that count alone their evidence cannot be discarded. During cross-examination nothing could be elicited to establish that PWs.2 and 3 deposed falsehood. It may be noted that apart from examining PWs.2 and 3 and producing Exs.A33 and 34, the claimants also produced Exs.A35 to A40—Income tax returns. However, the Tribunal did not give weight to those Income tax returns because of variations in the income of the deceased shown in those documents and hence, the Tribunal preferred Exs.A33 and 34 and fixed the monthly income of the deceased at Rs.10,000/-. I find no irregularity or illegality in the above said fixation.

b) The future prospects is concerned, the same cannot be taken into consideration for the reason the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[1] held that future prospects need not be taken for the persons above the age of 50 years. Further, it is not the appeal filed by the claimants. Hence, the same cannot be taken into consideration.

c) Then, coming to the multiplier, the Tribunal having found the date of birth of the deceased as 05.01.1958 arrived his age as 56 years and accordingly accepted '8' as multiplier. It must be noted that as per ***Sarla Verma***'s case (1 supra) multiplier for the persons in the age group of 56 to 60 is '9'. However, the Tribunal has taken '8' as multiplier. Therefore, the appellant cannot harp that multiplier is on high side. Similarly, it cannot complain that monthly income fixed by the Tribunal as high. So at the out set, the compensation awarded by the Tribunal under different heads is just and reasonable and it does not require any interference.

9) In the result, appeal filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.1513 of 2006.

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

U. DURGA PRASAD RAO, J

Date: 26.02.2016

Murthy

[1] 2009 ACJ 1298 (SC) = (2009) 6SCC 121