HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.330 of 2013 and 3728 of 2012

COMMON JUDGMENT:

The 3rd respondent-Oriental Insurance Co.Ltd, among three respondents including driver and owner of the lorry bearing No.AP 24V 3096, impugning the award of the tribunal in M.V.O.P.No.599 of 2009 dated 12.10.2012 that was filed under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.25,00,000/-, from the contest by the insurer, for driver and owner remained ex parte, with the finding of the accident was the result of rash and negligent driving of the driver of the lorry, while the deceased along with PW.2 were proceeding on a bike bearing No.AP 27 AC 5221 towards ONgole from Singarayakonda of the accident occurred at NH.5 on 21.10.2009 in the broad day light, from what the tribunal awarded of Rs.19,19,000/- with interest at 9% p.a., impugning the said quantum as exorbitant and excessive and only just compensation to be fixed by reducing the same, so also the rate of interest, maintained the appeal in MACMA No.330 of 2013 and the four claimants, no other than wife, minor child and parents of the deceased (all dependants), impugning the said quantum as utterly low and tribunal ought to have awarded the compensation as prayed for, maintained the other appeal in MACMA No.3728 of 2012.

2. Heard the learned for the respective appellants-cum-contesting respondents as vice-versa from the driver and owner remained ex parte in the appeals and perused the material on record.

3. The fact that the accident was the result of the rash and negligent driving of the driver-1st respondent of the claim petition belongs to the 2nd respondent insured with the 3rd respondent, is not in dispute much less there is any need to interfere with the finding of the tribunal in this regard, but for only the quantum of compensation from the respective contentions of one claiming as excessive and other as utterly low, to decide what is the just compensation.

4. In that regard, coming to the age of the deceased, Ex.A4-Post Mortem Report shows his age about 28 years as on the date of accident and Ex.X2-Nowkar Nama showing the deceased was working in Mythri Wines Shop shows his date of birth as 15.06.1981, to say, he completed 28 years as on the date of accident. From the above, the multiplier that is applicable is '17', as per Sarla Verma v. Delhi Transport Corporation[1] that was rightly taken by the tribunal. The

[1] 2009 ACJ 1298

tribunal taken personal expenses deduction at 1/3rd but it is 1/4th as per paras 30 to 33 of the said expression in Sarla Verma (supra).

5. Coming to the earnings of the deceased, the evidence on record so far as income of the deceased and earnings concerned is that of PWs.3 to 5 and PW.1 besides Exs.X1 to X4 and Exs.A7 to A12. Among which Ex.X3 is the income tax returns, which shows the license of wine shop for the income tax returns of Mythri Wines stand in the name of PW.3 alone, who submitted the returns. Ex.X2 shows the deceased was working in the wine shop, which is the Nowkar Nama and the license granted for Mythri Wines at Ulavapadu is in the name of Sk.Mugib Basha and the deceased-Sk.Ahmmad Basha was only an authorized servant in the wine shop with title Nowkar Nama in Form-N-I and there are signatures to that effect and also the signature of the Prohibition and Excise Superintendent with seal, as rightly observed by the tribunal giving sanctity to it. Once such is the case, the income tax returns said to have been filed by the deceased under Ex.X3 on 15th, month is illegible of the year 2009 cannot be given credence of getting any income, as if partner from that wine shop when the own business shows only an employee in the wine shop, that is also conclusion rightly arrived by the tribunal in saying from the

evidence of PW.3 with reference to Ex.X2 the deceased was an employee in the wine shop getting Rs.4,000/- p.m. as salary. The tribunal also rightly not believed evidence of PWs.3 to 5 with reference to the so called unregistered partnership between deceased and one Sk.Ahmmad Basha mentioned as 10.07.2008. In fact, there is no signature of the deceased as per the tribunal therein and even there is a signature it cannot be given credence, when the license obtained from the Excise Department with signatures of the Excise Superintendent that is placed reliance by the claimants show deceased was not a partner but only a servant on salary of Rs.4,000/- p.m. from 2008 and the accident was dated 21.10.2009. Thereby, so far as that finding of the tribunal of deceased was never a partner of Mythri Wines and not getting income from so called partnership business but only an employee of Mythri Wines by getting salary of Rs.4,000/- p.m., no way requires interference.

6. Coming to Ex.A7, the so called single page lease agreement executed in favour of Sk.Ahmmad Basha i.e., deceased by Sk.Hussain referring to 10 tyres Turbo Lorry bearing No.AP 27W 1699 of Ashok Leyland 2214 2006 model sold out for Rs.12,50,000/- by the erstwhile owner Hussain, for discharge of hire purchase amount dues and bank debts.

There is no other evidence of the same is transferred in the name of the deceased, pursuant to that.

7. Coming to Ex.X4, it relates to the vehicle registration of a lorry bearing No.AP 27W 9769 in the name of Sk.Ahmmad Basha, who is the deceased and it is purchased with finance from Chola Mandalam DBS Finance Ltd. under hire purchase agreement dated 24.10.2007. Thus, there is one lorry from Ex.X4 if at all in the name of the deceased from said documentary evidence. Ex.A11-Chehallam invitation card also relates to it. Exs.A9, A10 and A12 relate to manner of accident, no way relevant to consider the means and avocation of the deceased. Exs.X1 to X3 as discussed supra relating to Mythri Wines, thus even taken in the name of the deceased there is one lorry, once he is a regular employee in the wine shop under Ex.X2 proved from the evidence also through PWs.3 to 5, what is supervisory loss of the lorry, since the lorry has to be succeeded by the estate of the deceased that too it was under hypothecation with the financier, what the tribunal taken of income there from of Rs.10,000/- he was getting is with no basis. In support of the said contention, the learned counsel for the claimants relied on the expression of this Court in United India Insurance Company Limited v. Dandugula Bheem Bai

@ Bheemakka[2]. The supervisory loss when he is a regular employee cannot be taken as full time earnings but additional maximum to take Rs.2000/- to Rs.3000/- p.m. No doubt, any employee even entitled to prospective earnings as per Sarla Verma (Supra) and from the age of the deceased and from Nowkar Nama saying Rs.4,000/- p.m. the prospective earnings can be taken as 50%, it comes to Rs.6,000/- p.m., Rs.4,500/- maximum can be taken towards supervisory loss or personal supervision and transport business of said lorry business, since he is not full time supervisor but full time worker, with prospective earnings already taken. Out of said Rs.10,500/-, 1/4th is deducted towards personal expenses, it comes to Rs.7,875/-p.m. and Rs.94,500/- p.a. and the same is multiplied with the multiplier '17', it comes to Rs.16,06,500/-. Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.15,000/- towards care and guidance of minor child. Thus, in total, the claimants are entitled to the just compensation of Rs.17,06,500/-

[2] 2004(5) ALT 515

8. So far as rate of interest at 9% p.a. concerned, it is required to reduce to 7.5% p.a. as per Rajesh Vs. Ranbir Singh[3] and TN Transport Corporation v. Raja Priya[4].

9. Accordingly, MACMA No.3728 of 2012 is dismissed; MACMA No.330 of 2013 is partly allowed by reducing the compensation from Rs.19,19,000/- to Rs.17,06,500/- and also the rate of interest from 9% to 7.5% p.a. In other respects, the award of the tribunal holds good. There is no order as to costs.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:08.11.2016
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[3] **2013 ACJ 1403**
[4] (2005) 6 SCC 236