HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.514 of 2009

JUDGMENT:

Aggrieved by the Award dt.27.10.2003 in M.O.P.No.303 of 2001 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Visakhapatnam (for short 'the Tribunal'), the United India Insurance Company Limited preferred the instant appeal.

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

3) The factual matrix of the case is thus:

a) The first claimant is the wife and claimants 2 and 3 are the minor sons of the deceased—G.Subrahmanyam. Their case is that on 20.11.2000 at about 7.30 p.m, while the deceased in order to reach his house crossing the NH-5 road at Akkireddipalem—Nathayyapalem one Mahindra Jeep bearing No.AP 30 T 4843 being driven by its driver at high speed and in a rash and negligent manner dashed the deceased. The deceased sustained grievous injuries and immediately he was shifted to R.K.Hospital, Gajuwaka and from there to KGH, Visakhapatnam, where he succumbed to injuries. It is averred that the accident was occurred due to rash and negligent driving by the driver of offending Jeep. On these pleas, the claimants filed M.O.P.No.303 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 to 3, who are the driver, owner and insurer of the offending Jeep and claimed Rs.8,00,000/- as compensation.

b) R.1 filed counter and denied the allegations made in the petition and contended that the offending vehicle was duly insured under cover note No.120 738 and Cert.No.10838. He thus prayed to dismiss the O.P.

c) R.2 adopted the counter filed by R.1.

d) R.3/Insurance Company filed counter denying all the averments made in the claim petition and urged to put the claimants to strict proof of the same. It contended that the deceased was at fault as he carelessly tried to cross the road and there was no negligence on the part of the driver of the offending jeep. Finally, R.3 contended that compensation claimed by claimants is highly excessive and thus prayed to dismiss the OP.

e) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. Ex.B1—policy copy was marked on behalf of respondents.

f) The Tribunal having regard to the oral and documentary evidence awarded Rs.2,61,000/- as compensation with proportionate costs and interest at 9% p.a. against the respondents 1 to 3 under different heads as below:

Loss of earnings	Rs. 2,40,000/-
Loss of consortium	Rs. 15,000/-

Loss of estate	Rs. 5,000/-
Transport charges	Rs. 1,000/-

Total	Rs. 2,61,000/-

Hence, the appeal by Insurance Company.

4) Heard arguments of Mrs.A. Malathi, learned counsel for appellant/ Insurance Company and Mrs.M.Suguna, learned counsel for R1 to R3/ claimants. Learned counsel for appellant filed a memo vide USR No.1816/2008 dt.26.12.2008 submitting that this appeal is filed questioning the quantum of compensation and hence, R.5 is not a necessary party in this appeal. Notice to R4 returned unserved.

5) Questioning the compensation under the head loss of dependency, learned counsel for appellant would argue that the Tribunal committed error in fixing '15' as multiplier. She submitted that the deceased was aged 45 years and going by that age and in view of the decision of Hon'ble Apex Court in ***Smt.Sarla Verma and others v. Delhi Transport Corporation and another***[1] the appropriate multiplier is '14' but not '15' and therefore, '14' instead of '15' has to be applied.

6) Learned counsel for respondents 1 to 3/claimants opposed the said argument and contended that the compensation awarded under all heads is in fact a meager amount and the claimants could not prefer any appeal due to their personal constraints and therefore, the compensation

may not be further reduced.

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 reassessment?"

8) **POINT**: The accident, involvement of Mahindra Jeep bearing No.AP 30 T 4843 and death of deceased are not in dispute. As can be seen, the Tribunal having accepted the age of the deceased as 45 years, fixed the multiplier as '15'. However, as per ***Smt.Sarla Verma*** (1 supra), the appropriate multiplier for the persons in the age group of 41 to 45 years is '14'. Therefore, I find force in the submission of learned counsel for appellant. The compensation for loss of earnings of the deceased comes to **Rs.2,24,000/-**(Rs.2000 x 12 x 14 x 2/3rd). The compensation awarded under other heads is not disputed by the appellant.

Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of earnings	Rs. 2,24,000/-
Loss of consortium	Rs. 15,000/-
Loss of estate	Rs. 5,000/-
Transport charges	Rs. 1,000/-
Total	Rs. 2,45,000/-

So at the outset, the compensation is reduced by **Rs.16,000/-** (Rs.2,61,000/- minus Rs.2,45,000/-).

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

(i) The compensation awarded by the lower Tribunal is reduced from Rs.2,61,000/- to Rs.2,45,000/- with proportionate costs and interest @ 9% per annum from the date of O.P. till the date of realization.

(ii) The respondents in the OP 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: 13.07.2016
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[1] 2009 ACJ 1298