HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.60 of 2009

JUDGMENT:

Aggrieved by the Award dated 01.05.2008 in M.V.O.P.No.1539 of 2007 passed by the Chairman, M.A.C.T-cum-VI Additional District Judge, (III-FTC) Warangal at Mahabubabad (for short 'the Tribunal'), the 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 01.08.2007 the deceased—Merugu Chandrakala who was a vegetable vendor, boarded auto bearing No.AP 36V 1190 to go to her village and when it reached near Milk Chilling Centre, Vallabhanagar the driver of the auto drove the same at high speed in a rash and negligent manner and when he tried to avoid one cyclist who was coming in the opposite direction, the auto turned turtle due to which, the deceased died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of auto. On these pleas, they filed M.V.O.P.No.269 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending auto and claimed Rs.4,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) R2/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 driver of the auto had no valid driving licence and hence it is not liable to pay compensation. Finally, R2 contended that compensation claimed by the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. Ex.B1—policy copy was marked on behalf of respondents.

e) The Tribunal on appreciation of evidence fixed fault on driver of the auto and ultimately awarded Rs.2,79,500/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 7.5% p.a. under different heads as below.

Loss of earnings	Rs. 2,70,000.00
Loss of estate	Rs. 2,500.00
Funeral expenses	Rs. 2,000.00
Loss of consortium	Rs. 5,000.00

Total	Rs. 2,79,500.00

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri P.Bhanu Prakash, learned counsel for appellant/Insurance Company and Sri G.Anandam, learned counsel for R1 to R3/claimants. Notice sent to R4/owner was served but no representation on her behalf.

5) The main grievance of learned counsel for appellant/Insurance Company is that while computing compensation for loss of earnings of the deceased the Tribunal after fixing monthly income of the deceased as Rs.1,500/- and arriving her annual income at Rs.18,000/-, failed to apply statutory deduction of $1/3^{rd}$ towards personal and living expenditure of the deceased. Instead the Tribunal, he argued, multiplied the entire amount of Rs.18,000/- with multiplier ‘15’ and arrived loss of dependency at Rs.2,70,000/- (Rs.18,000/- x 15). In view of this mistake, the compensation for loss of dependency was unduly escalated. He thus prayed to allow the appeal and re-assess the compensation.

6) Learned counsel for respondents while admitting that lower Tribunal forgot to apply statutory deduction, however, argued that it is a case of death of vegetable vendor in a motor vehicle accident leaving her family members forlorned and considering this fact the statutory deduction may not be applied in their case at this length of time after the death of the deceased.

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

“Whether the award passed by the Tribunal is factually and legally correct?”

8a) **<u>POINT</u>**: On a careful perusal of the award, this Court finds force in the argument of learned counsel for appellant. The Tribunal, probably by inadvertence failed to apply the statutory deduction of 1/3rd from the gross earnings of the deceased and thereby it arrived loss of earnings at Rs.2,70,000/- (Rs.1,500/- x 12 x 15). The deceased is survived by three LRs. i.e. husband and two children. Had the deduction of 1/3rd was applied by the Tribunal, the compensation for loss of earnings would have been arrived at Rs.1,80,000/- (Rs.1,000/- x 12 x 15). So, the difference in the compensation awarded is Rs.90,000/- (Rs.2,70,000/- minus Rs.1,80,000/-).

b) It is to be seen that the accident was occurred in the year 2007 wherein the deceased who was a vegetable vendor and supporting her family members by contributing her earning, died and due to her death her family members suffered not only loss of family member but also her earnings. Considering this fact and total compensation claimed by the claimants is not an excessive amount, this Court is of the view that deducting the differential amount of Rs.90,000/- at this length of time after the accident would cause much hardship to the respondents/claimants. Therefore, the compensation for loss of earnings is reduced from 2,70,000/- to Rs.2,30,000/- instead of Rs.1,80,000/-. Thus, the total compensation payable to the claimants is stated as below:

Loss of earnings	Rs. 2,30,000.00
Loss of estate	Rs. 2,500.00
Funeral expenses	Rs. 2,000.00
Loss of consortium	Rs. 5,000.00
Total	Rs. 2,39,500.00

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.2,79,500/- to Rs.2,39,500/- with proportionate costs and interest @ 7.5% 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.

(iii) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 21.06.2016
Murthy