

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.15 of 2009

JUDGMENT:

Aggrieved by the Award dated 07.08.2008 in M.V.O.P.No.817 of 2007 passed by the Special Judge for SC, ST (POA) Act-cum-VI Additional District and Sessions Judge-cum-Chairman, MACT, Kurnool (for short “the Tribunal”), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 13.05.2007 at about 2:30 PM, the deceased—N.Lakshmi Devi along with her husband—B.Nageswara Rao boarded APSRTC bus bearing No.AP 9Z 8859 at new bus stand to go to their village—Pedda Potulapadu and when it reached near Masa Masjid on Kurnool—Gadwal road, the driver of the bus drove the same at high speed and in a rash and negligent manner and lost control, due to which the bus fell down in a road side ditch and the inmates of the bus including the deceased received grievous injuries. Immediately she was shifted to Government General Hospital, Kurnool for treatment and she died on 15.05.2007 while undergoing treatment. It is averred that the accident was occurred due to the fault of the driver of RTC bus. On these pleas, the claimants filed M.V.O.P.No.817 of 2007 under Sections 163-A and 166 of Motor Vehicles Act (for short MV Act) and claimed Rs.3,50,000/- as compensation against respondent

—Corporation.

b) Respondent—Corporation filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof. Respondent contended that it is for the claimants to prove the age, avocation of the deceased and that she was travelling in the bus at the time of accident. Respondent/Corporation further contended that compensation claimed by the claimants is highly excessive and untenable and thus prayed to dismiss the O.P.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. No oral or documentary evidence was marked on behalf of respondent.

d) The Tribunal after considering the evidence on record held that the driver of the RTC bus was responsible for the accident and awarded compensation of Rs.1,94,000/- with proportionate costs and interest @ 7.5% p.a. under different heads as follows:

Loss of dependency	Rs. 1,92,000.00
Funeral expenses	Rs. 2,000.00

Total	Rs. 1,94,000.00

Hence, the appeal by claimants.

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

4) Heard arguments of Sri S.V.Govardhan Reddy, learned

counsel for appellants/claimants and Sri A.Rama Rao, learned counsel for respondent/Corporation.

5) Learned counsel for appellants/claimants argued that in the connected MACMA No.62 of 2009 filed by the present claimants against the award in MVOP No.819 of 2007 for the death of their father in the same accident, the High Court enhanced the compensation from Rs.1,82,000/- to Rs.3,09,500/- and therefore, basing on the aforesaid covered judgment compensation may be suitably enhanced in the instant case also. He further argued that Tribunal failed to award any compensation for loss of love and affection and the said aspect may be considered in the appeal.

6) Learned counsel for respondent/APSRTC though agreed that instant appeal can be disposed of in terms of covered judgment in MACMA No.62 of 2009, however, argued that appellants/claimants being the daughters of the deceased, are not entitled to compensation for loss of consortium and in MACMA No.62 of 2009 this Court awarded Rs.9,500/- towards loss of consortium by inadvertence and the same may not be taken into consideration in the present appeal.

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

“Whether the appellants/claimants are entitled to enhanced compensation?”

8) **POINT**: Accident, involvement of APSRTC bus bearing

No.AP 9Z 88859 and death of deceased—N.Lakshmi Devi are not in dispute. It can be seen that in MVOP No.817 of 2007 the Tribunal having considered the avocation of the deceased as an agricultural coolie fixed her earnings as Rs.1,500/- per month and after deducting $\frac{1}{3}^{\text{rd}}$ thereof, arrived net annual contribution to the family as Rs.12,000/- and having regard to her age of 35 years, selected '16' as multiplier ultimately arrived the loss of dependency at Rs.1,92,000/- (Rs.12,000/- x 16). To this amount the Tribunal added Rs.2,000/- towards funeral expenses and granted the total compensation of Rs.1,94,000/-

9) In MACMA No.62 of 2009 the High Court following the judgment of Honourable Apex Court in ***Kishan Gopal v. Lala***^[1] has taken the notional income of the deceased i.e. father of the present appellants who was an agricultural coolie, as Rs.30,000/- and accordingly computed the compensation. The present appeal is concerned, deceased who is the mother of the claimants, was also an agricultural coolie and therefore, the above judgment of the Apex Court as well as the judgment of this High Court can be followed to fix the annual income of the deceased as Rs.30,000/-. Thus after deducting $\frac{1}{3}^{\text{rd}}$ from the gross earnings, the net annual contribution comes to Rs.20,000/- and loss of dependency comes to Rs.3,20,000/- (Rs.20,000/- x 16). As rightly argued by the learned counsel for respondent/Corporation, the appellants do not deserve compensation towards loss of consortium. However, they deserve compensation for loss of love and affection of their

mother. Hence, they are awarded Rs.10,000/- towards loss of love and affection. Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs. 3,20,000.00
Love and affection	Rs. 10,000.00
Funeral expenses	Rs. 2,000.00

Total	Rs. 3,32,000.00

Thus, the compensation is enhanced by Rs.1,38,000/- (Rs.3,32,000/- minus Rs.1,94,000/-).

10) In the result, this MACMA is partly allowed and ordered as follows:

- a) The compensation is enhanced by Rs.1,38,000/- with proportionate costs and interest @ 7.5% p.a. from the date of OP till the date of realisation.
- b) The respondent/Corporation is directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against it.
- c) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 29.06.2016

Murthy

[\[1\]](#) (2014) 1 SCC 244