HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.457 of 2009

JUDGMENT:

Aggrieved by the Award dated 24.06.2002 in O.P.No.721 of 2000 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Nalgonda (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 16.04.2000 when the deceased was proceeding on his scooter to Atchampet and when he reached near Culvart No.108/1 of Dindi Village, one Maruthi Car bearing No.AP 7A 1299 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed against the deceased, due to which, the deceased sustained grievous injuries and died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of Maruthi Car and due to sudden demise of the deceased, the claimants who are wife and parents, became destitutes. On these pleas, they filed O.P.No.721 of 2000 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 lorry and claimed Rs.2,00,000/- as compensation.

b) R1/owner of the vehicle remained *ex parte*.

c) The 2nd respondent/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimants to strict proof of the same. It denied that the accident was occurred due to rash and negligent driving of Maruthi Car and contended that the accident was caused due to the fault of deceased. It further contended that the Car driver had no valid driving license and the compensation claimed by the claimants is highly excessive and exorbitant and thus prayed to dismiss the O.P

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

e) The lower Tribunal on appreciation of both oral and documentary evidence awarded Rs.1,47,400/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of dependency	Rs. 1,22,400-00
Non-pecuniary damages	Rs. 15,000-00
Loss of consortium	Rs. 10,000-00
Total	Rs. 1,47,400-00

Hence, the appeal by claimants Nos.2 and 3.

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

4) Heard arguments of Sri N.Ashok Kumar, learned counsel for appellants/claimants and Sri Srinivasa Rao Vutla, learned counsel for R2/ Insurance company. Case against R.1 and R.3 was dismissed for default on 15.12.2008. However, since R.1 remained *ex parte* and suffered decree before the Tribunal, his absence in the appeal will not have any consequence in view of the decision reported in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma***[1]. R.3 is the Claimant in the OP.

5 a) Challenging the compensation awarded as low and inadequate, learned counsel for the appellants/Claimants Nos. 2 and 3, who are the parents of the deceased, argued that the Tribunal committed manifest error in fixing the income of the deceased as Rs.900/- per month inspite of the fact that the deceased by doing sheep business earning Rs.4000/- per month. The Tribunal erroneously considered him only as a labourer than a sheep trader. Thereby, the compensation was drastically reduced. Learned counsel, alternatively argued that even assuming that the deceased was a coolie, still the Tribunal ought to have fixed his earnings at a minimum rate of Rs.3000/- per month. He relied upon a judgment reported in ***P. Eshwari Balarajaiah and others v. Md. Riyas and another***[2] and submitted that in respect of death of a coolie in the year 1992, his daily income was fixed at Rs.50/- per day by the High Court basing on the Minimum Wages Act and therefore at that rate the income of the deceased whose death

was occurred in the year 2000 would not be less than Rs.3000/-. He thus prayed to reassess the compensation and increase it suitably.

b) Secondly, learned counsel argued that the appellants are the old parents of the deceased and they were depending on the deceased and the Tribunal in addition to granting a low compensation, awarded a paltry sum of Rs.15,000/- to the appellants/claimants Nos.2 and 3, which apportionment was hardly sufficient for them. He submitted that subsequent to the death of the deceased, first claimant re-married and leads happy conjugal life.

He thus, prayed to allow the appeal and enhance the compensation and award suitable amount to the appellants/claimant Nos. 2 and 3.

6) Per contra, learned counsel for 2nd respondent/insurance company supported the award and argued that there is no cogent evidence to believe that the deceased was engaged in sheep trade and earning Rs.4000/- per month and therefore, the Tribunal rightly fixed his income as Rs.900/- per month and there is no need to re-visit the same. He, thus, prayed to dismiss the appeal.

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 enhancement?"

8) **POINT**: Accident, involvement of Scooter and Maruti Car and the death of the deceased are admitted facts. The bone of contention is only the quantum of compensation. On a careful scrutiny of the facts and evidence, I am of the considered view that the compensation awarded and the apportionment made to the appellants/claimant Nos. 2 and 3 are not in proper lines.

9) Loss of dependency is concerned, the Tribunal observed that there is no evidence to hold that the deceased was engaged in sheep trade and earning Rs.4000/- per month and therefore treating him as Labourer, fixed his income at Rs.900/- per month and by applying 1/3rd deduction and taking '17' as multiplier, arrived at a sum of Rs.1,22,400/-. I am constrained to note that there is evidence to believe that the deceased was engaged in sheep trade. Ex.A.1—FIR was lodged by the elder brother of the deceased within short time after the accident, wherein, he referred the age of the deceased as 28 years and his occupation as sheep business. Since the FIR was registered within no time after the accident, no manipulation relating to the occupation of the deceased can be attributed. The Tribunal has not taken this fact into consideration. Having regard to the fact that the deceased was engaged in sheep business, he need not be considered as a coolie. In view of the nature of his occupation, his monthly income is fixed at Rs.2000/-. Following the decision in ***Santosh Devi v. National***

Insurance Company Limited and others[3]**,** 30% is to be added towards future prospectus. Thus, his total income comes to Rs.2,600/- (Rs.2000 + 600/-). The annual income which will serve the purpose as multiplicand comes to Rs.31,200/-. From the above said amount, 1/3rd is deducted towards his personal expenditure, the net annual contribution of the deceased to his family comes to Rs.20,800/-. The deceased was aged 28 years, as per Inquest and Post Mortem Reports. For his age, '17' is provided as multiplier by the Apex Court in ***Smt.Sarla Verma vs. Delhi Transport Corporation***[4]***.*** Thus, the loss of dependency comes to Rs.3,53,600/- (Rs.20,800 x 17).

Thus, the compensation payable to the appellants/claimants under different heads is as below:

Loss of dependency	Rs. 3,53,600-00
Non-pecuniary damages	Rs. 15,000-00
Loss of consortium	Rs. 10,000-00

Total	Rs. 3,78,600-00
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10) It should be noted that compensation now awarded exceeds the original claim of Rs.2,00,000/- made by the appellants/claimants. However, in fit cases, the Court has power to grant just and reasonable compensation though it exceeds the claim made by the concerned claimants as laid down by the Apex Court in ***Nagappa vs. Gurudayal Singh***[5]. Thus, the compensation is enhanced from Rs.1,47,400/- to

Rs.3,78,600/-.

11) It may be noted that as per the submission of learned counsel for appellants, first claimant had re-married and therefore, there is no need to enhance the compensation for loss of consortium. Then regarding the apportionment, as rightly submitted by learned counsel for appellants/ claimant Nos.2 and 3 that the appellants are aged persons and the Tribunal awarded a low amount to them, the same needs to be suitably increased.

12) In the result, this Appeal is allowed with costs and ordered as follows:

(i) The compensation is enhanced from Rs.1,47,400/- to Rs.3,78,600/- with proportionate costs and the enhanced compensation shall carry interest @ 7.5% per annum from the date of OP till the date of realization. Whereas, the original compensation shall carry interest @ 9% per annum.

(ii) 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) The appellants/claimant Nos. 2 and 3 are directed to pay the additional Court Fee on Rs.1,78,600/- (Rs.3,78,600/- minus Rs.2,00,000/-) within one(1) month from the date of this judgment.

(iv) Upon realising of compensation, first claimant in the OP being the wife of the deceased shall get Rs.2,00,000/- plus costs and interest to her share, whereas, the appellants/claimant Nos.2 and 3 being old aged parents of the deceased shall get Rs.1,78,600/- plus interest in equal moieties to their share. All the claimants are permitted to withdraw their respective shares.

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

U. DURGA PRASAD RAO, J

Date: 02.06.2016

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[1] 2001 (1) ALT 485
[2] 2003 (5) ALD 305 (DB)
[3] 2012 ACJ 1428
[4] 2009 ACJ 1298 (SC)
[5] 2003 ACJ 12 (SC) (FB)