

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A. No.2602 of 2011

JUDGMENT:

Aggrieved by the Award dated 13.12.2000 in M.V.O.P.No.44 of 2000 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, Tirupati (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 18.10.1999 at about 12:30 PM, when the deceased—Venkataramana was proceeding by walk near Balaji Link Bus Stand, Southern side gate of Hare Rama Hare Krishna road on the extreme left side of the road with a walking stick, a Jeep bearing No.AP 03 C 3250 being driven by its driver in a rash and negligent manner and at high speed, hit the deceased and thereby the deceased sustained grievous injuries and was shifted to SVRR Hospital, Tirupati and while undergoing treatment and he died on 25.10.1999. It is averred that the accident was occurred due to rash and negligent driving by the driver of the jeep. On these pleas, the claimants filed M.V.O.P.No.44 of 2000 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are the owner and insurer of the offending jeep and claimed Rs.2,00,000/- as compensation.

b) The 1st respondent remained *exparte*.

c) The 2nd respondent/Insurance Company filed written statement denying the material averments and urged to put the claimants in strict proof of the same. R2 contended that there is no negligence on the part of driver of the jeep and the accident was occurred due to the negligence of the claimant himself. Finally, R2 contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the OP.

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

e) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.1,13,600/- with proportionate costs and simple interest @ 12% p.a. against respondents 1 and 2 under different heads as below:

Loss of dependency	Rs. 93,600-00
Loss of consortium	Rs. 10,000-00
Love and affection	Rs. 10,000-00

Total:	Rs.1,13,600-00

Hence, the appeal by claimants.

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

4) Heard arguments of Sri S.V.Muni Reddy, learned counsel for appellants/claimants and Sri Bathula

Venkateswara Rao, learned counsel for 2nd respondent/Insurance Company. Case against R1/owner was dismissed for default vide Court Order dated 24.06.2011. Since R1 remained *ex parte* and suffered decree before the lower Tribunal, his absence in this appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others***^[1].

5) Challenging the compensation awarded by the Tribunal as low, learned counsel for appellants argued that deceased was aged about 45 years and though he was a beggar, as he was begging in a pilgrim place like Tirupati he was earning Rs.100/- per day due to charity of the people and in that view of the matter, Tribunal was not right in fixing his monthly income only Rs.900/- and thereby compensation was drastically reduced. He thus prayed to enhance the compensation.

6) Per contra, learned counsel for R2/Insurance Company argued that as there is no consistency in the income of the deceased, the Tribunal rightly fixed his income as Rs.900/- per month and accordingly computed compensation and there is no illegality or irregularity in the said fixation and therefore the appeal may be dismissed.

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 interference?

8) **POINT:** Accident, involvement of jeep bearing No.AP 03 C 3250 and death of the deceased are not in dispute. The bone of contention is quantum of compensation. As per the contention of appellants, the Tribunal erred in fixing the monthly income of the deceased as Rs.900/-. I find some force in the above contention. The deceased was aged between 45 and 47 years and his eye sight was affected when he fell down from tree some years ago and thereafter he shifted to pilgrim place Tirupati and was eking out his livelihood by begging. It is true that there can be no consistency in the income of the deceased as the same depends upon the charity of the pilgrims and public. However, considering the fact that Tirupati is one of the renowned pilgrim places in the world and in view of location of many temples at Tirupati, it can be said that beggars would get good alms as a charity from the floating pilgrims. In that view of the matter, the income of Rs.900/- per month as fixed by the Tribunal can be said to be a very low amount. Even otherwise, as per the Second Schedule of M.V.Act the notional income of the non-earning person is fixed as Rs.15,000/-. Therefore, the said figure can be taken up for computation of compensation in the instant case. Thus after deducing $\frac{1}{3}^{\text{rd}}$ towards personal expenditure of the deceased, the loss of dependency comes to Rs.1,30,000/- (Rs.15,000/- minus Rs.5,000/- towards $\frac{1}{3}^{\text{rd}}$ x 13). The compensation awarded under other heads is

reasonable and hence needs no interference.

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

Loss of dependency	Rs.1,30,000-00
Loss of consortium	Rs. 10,000-00
Love and affection	Rs. 10,000-00

Total:	Rs.1,50,000-00

Thus the compensation is enhanced by **Rs.36,400/-** (Rs.1,50,000/- minus Rs.1,13,600/-).

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

- a) The compensation is enhanced by **Rs.36,400/-** with proportionate costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a from the date of O.P till the date of realization.
- b) Respondent Nos.1 and 2 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: 01.04.2016

Murthy

[\[1\]](#) 2001 (1) ALT 485