HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1157 of 2009

JUDGMENT:

Aggrieved by the Award dated 24.11.2006 in M.V.O.P.No.71 of 2003 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, Ongole (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 05.09.2002 at about 3.00 PM, when the deceased—Kamani Srinivasa Rao and his friend—Marella Lakshmi Narayana who were working under the 2nd respondent Finance Corporation, were going on their motorcycle bearing No.AP 27 F 3069 to collect the chit amounts from the borrowers of Bandi Yelugondla village of Darsi Mandal and when they reached outskirts of Chandalur village, one tractor-cum-trailor bearing Nos.AP 7U 6320 and 6321 being driven by its driver in a rash and negligent manner at high speed, came in the opposite direction and dashed against the motorcycle. In the resultant accident, the deceased sustained multiple injuries and died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of tractor and due to sudden demise of the deceased, the claimants who are his dependants became destitutes. On these pleas, they filed M.V.O.P.No.71 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent No.1—original owner, R2—employer, R3—Insurance Company and R6—subsequent owner and claimed Rs.7,15,000/- as compensation. R.4 and R.5 are parents of deceased.

b) R2/employer and R6/subsequent owner remained ex-parte.

c) R1—original owner filed counter contending that though he was the owner of the tractor-cum-trailer, but he sold the vehicle to R6 much prior to the date of accident and therefore, he was not the owner of the vehicle by the date of accident and he was not liable to pay the compensation.

d) R3/Insurance Company filed counter denying all the averments made in the claim petition and urged to put the claimants to strict of the same. It contended that driver of the tractor had no valid licence and hence it is not liable to pay compensation. R3 also contended that compensation claimed by the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

e) R4 and R5 who are parents of the deceased filed separate counter contending that they were depending upon the income of the deceased and he was earning Rs.8,000/- per month and therefore, they are entitled to a share in the compensation fixed by the Court.

f) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. RWs.1 to

4 were examined and Exs.B1 and B2 were marked on behalf of respondents.

g) The Tribunal, on appreciation of both oral and documentary evidence, held that driver of the tractor was responsible for the accident and ultimately awarded Rs.3,75,000/- as compensation against respondents 2 and 6 while exonerating R1/owner and R3/Insurance Company with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency	Rs. 3,60,000-00
Loss of consortium	Rs. 15,000-00
Total	Rs. 3,75,000-00

Hence, the appeal by claimants.

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

4) Heard arguments of Sri M.Sudhir Kumar, learned counsel for appellants/claimants, Sri S.Narendranadh Redy, learned counsel for R1/owner of the tractor, Sri P.Phalguna Rao, learned Standing Counsel for R3/Insurance Company. Notice sent R2, R4 to R6 was served but no representation on their behalf hence treated as heard.

5) a) Challenging the award, learned counsel for appellants/claimants, firstly, argued that the Tribunal committed error in exonerating R.1, original owner of the Tractor-cum-Trailor bearing Nos. AP 7 U 6320 and 6321, on

the ground that long prior to the accident, he sold away the tractor-cum-trailor to R.6. He submitted that except the oral assertions of RWs. 1 to 3, there was no documentary proof to establish the said fact inasmuchas the alleged transfer of the vehicle from R.1 to R.6 was not reflected in the R.C. Book and other records and R.1 did not produce any such record. On the other hand, in Ex.A.4—MVI Report, the name of R.1 was shown as owner of the vehicle. Learned counsel thus submitted that the Tribunal to resolve the controversy, ought to have passed the decree against R.1 and R.6.

b) Secondly, impugning the quantum of compensation, learned counsel argued that the deceased was working under the second respondent/Finance company and earning Rs.4000/- per month, which is evident from Ex.A.6, but, the Tribunal without considering the same, notionally fixed his income at Rs.2,500/- per month and thereby, the compensation was drastically reduced. He further argued, the Tribunal has not awarded any compensation towards funeral expenses and loss of estate. He, thus, prayed to allow the appeal.

6) Per contra, learned counsel for R.1 while supporting the award, argued that R.1 sold away the vehicle to R.6 on 10.06.2002 for Rs.1,50,000/-. So, by the date of accident i.e., 5.09.02, he was not the owner of the vehicle and this fact was clearly deposed by RWs. 1 to 3 and having believed them, the Tribunal rightly exonerated R.1 from its

liability. He, thus, prayed to dismiss the appeal.

7) Learned counsel for R.3 submitted that neither the Tractor-cum-trailor nor the motor cycle was insured with R.3 and therefore, the Tribunal rightly absolved R.3 from the liability.

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

"Whether the compensation awarded by the Tribunal is factually and legally sustainable?"

9) **POINT**: Accident, involvement of tractor-cum-trailor and the motor cycle and the death of the deceased are admitted facts. First point of controversy is whether the Tribunal was right in exonerating R.1, who is the owner of the tractor-cum-trailor. It is true that R.1 contended before the lower Tribunal that he sold away his vehicle on 10.06.2002 i.e., much prior to the accident to R.6 and therefore, he was not answerable for the claim. No doubt besides himself, R.1 examined RWs. 2 and 3 through whom he allegedly negotiated with R.6 for effecting transfer of the vehicle. Except making oral assertions, first respondent did not produce any recorded proof showing the transfer of the vehicle. Section 50 of the Motor Vehicles Act, 1988, prescribed the procedure for affecting transfer of the vehicle whereunder the factum of transfer has to be intimated to the concerned RT Authorities,

who would then record the said fact in the Certification of Registration. First respondent did not produce RC book or other relative documents showing the transfer of vehicle in favour of R.6. On the other hand, in Ex.A.4—MVI Report the name of first respondent is shown as owner of the vehicle. In these circumstances, I am of the considered view that the lower Tribunal was not right in placing implicit reliance on the oral evidence of RWs. 1 to 3 to exonerate R.1 from its liability. On the other hand, it should have fastened liability both on R.1 and R.6 in the interest of justice.

10) Compensation is concerned, the record no doubt shows that the deceased as well as RW.2 were working under second respondent/Finance Company by the date of accident. To this extent, there is no demur. However, Ex.A.6—Service Certificate is concerned, except filing the said document, claimants have not taken pains to examine the authorized employee of R.2 to demonstrate the authenticity of the contents in Ex.A.2. Therefore, the Tribunal rightly rejected Ex.A.6 and fixed notional income of the deceased as Rs.2,500/- per month. However, it has not taken into consideration the future prospects of the deceased. Therefore, having regarding to the financial vagaries and economic instability of finance companies, a sum of Rs.500/- is added towards future prospects of the deceased. The annual income of the deceased which will serve as multiplicand comes to Rs.36,000/- (Rs.3000 x 12). If 1/3rd is deducted towards personal expenses, the net

annual contribution of the deceased to his family comes to Rs.24,000/-. The Tribunal rightly fixed '18' as multiplier. So, the loss of dependency comes to Rs.4,32,000/-. Since the Tribunal has not awarded any compensation towards funeral expenses and loss of estate, a sum of Rs.15,000/- each is awarded under those two heads. Thus, the compensation payable to the appellants/claimants under different heads is as below:

Loss of dependency	Rs. 4,32,000-00
Loss of consortium	Rs. 15,000-00
Loss of funeral expenses and Loss of estate	Rs. 30,000-00
Total	Rs. 4,77,000-00

11. In the result, Appeal is allowed and ordered as follows:

(i) The compensation is enhanced by **Rs.1,02,000/- (Rs.4,77,000/- minus Rs.3,75,000/-)** with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

(ii) Respondent Nos.1, 2 and 6 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: 02.06.2016

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