HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3246 of 2009

JUDGMENT:

Aggrieved by the Award dt: 22.11.2001 in M.V.O.P.No.461 of 1999 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Warangal (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 01.05.1999 at about 4.30 p.m, when the deceased—Venugopal was proceeding on his bicycle on the extreme left side of the road and when he reached Ambedkar Statute, Old bus stand, Wardhannapet, one lorry bearing No.16 U 0469 being driven by its driver at high speed and in a rash and negligent manner, went and dashed behind the cycle. In the resultant accident, the deceased sustained multiple injuries and died on the spot. It is averred that the accident was occurred due to rash and negligent driving of the driver of lorry 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.461 of 1999 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.7,00,000/- 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 lorry had no valid 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 thus 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 both oral and documentary evidence held that driver of the lorry was responsible for the accident and ultimately awarded Rs.2,61,300/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of dependency	Rs. 2,44,800-00
Loss of consortium	Rs. 15,000-00
Loss of estate	Rs. 1,500-00

Total	Rs. 2,61,300-00

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 Nandigam Krishna Rao, learned counsel for appellants/claimants and Sri Bathula Venkateswara Rao, learned counsel for R2/Insurance Company. Case against R1 was dismissed for default vide Court order dated 17.07.2009. 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 vs. Yelubandi Babu Rao @ Reddemma***[1].

5 a) Challenging the compensation awarded as drastically low, learned counsel for appellants/claimants argued that the Tribunal committed grave mistake in notionally taking the monthly income of the deceased as Rs.1800/- for computation of compensation for loss of dependency inspite of the fact that the deceased was a skilled tailor and running tailoring business under the name and style “Birla Tailor and Cloth Stores” at Wardhannapet in Warangal District and earning Rs.5,000/- p.m. Further, the

Tribunal committed error in not taking the future prospects of the deceased. Added to it, the Tribunal also committed error in accepting ‘17’ instead of ‘18’ as multiplier. In view of the aforesaid follies, he argued, the compensation for loss of dependency was unjustly reduced hence needs to be reassessed.

b) Nextly, learned counsel argued that the Tribunal without any reason and justification denied compensation to the claimants towards funeral expenses.

c) Lastly he argued that the Tribunal awarded low amount towards loss of consortium. He pointed out that the first claimant lost her husband at a prime age of 19 years and therefore, going by the decision of Hon’ble Apex Court in ***Rajesh vs. Rajbir Singh***[2] she deserves compensation of Rs.1,00,000/- for loss of consortium.

He thus prayed to allow the appeal and reassess the compensation suitably.

6) Per contra, learned counsel for 2nd respondent/Insurance Company while supporting the award argued that except harping that the deceased was running a tailoring shop under the name and style “Birla Tailor and Cloth Stores”, the claimants have not produced an iota of documentary evidence such as licence issued by the concerned Gram Panchayat / Municipality, Professional tax receipts etc., and therefore, the Tribunal rightly rejected the said claim and considering the deceased as an average 10th Class student, notionally fixed his monthly income at Rs.1800/- and accordingly computed compensation for loss of dependency which is just and reasonable and needs no reconsideration. Learned counsel further argued that since the claimants have not established the definite avocation of the deceased, the question of awarding future prospects does not arise. He finally argued that the Tribunal awarded Rs.15,000/- towards loss of consortium which was just and reasonable. 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 reassessment?”

8a) **<u>POINT</u>**: The accident, involvement of lorry bearing No.16 U 0469 and death of deceased are not in dispute. The primordial contention of the claimants is that compensation awarded under different heads is grossly low and inadequate. Hence, the said contention needs scrutiny in this appeal. It may be noted that when this Court called for the lower court record through its letter dt:17.09.2009, the lower Tribunal in its letter vide Dis.No.1842 dt: 09.03.2016 informed that Part III record containing depositions and exhibits was destroyed as per Gazette No.52, dt: 27.05.2005 and only sent the pleadings part of the record. Hence, this Court is handicapped by the lack of depositions and exhibits. Neither party in the appeal has produced their certified copies. In these circumstances, this Court has proceeded with the available record.

b) Loss of dependency is concerned, as stated supra, the claimants on the plea that the deceased was running a tailoring shop under the name and style “Birla Tailor and Cloth Stores” claimed that he was earning Rs.5,000/- p.m. However they did not produce any cogent evidence proving his avocation and income. Therefore, the Tribunal took his monthly income as Rs.1800/-. The deceased died on 01.05.1999 and having regard to the date of his death, the Tribunal’s fixing his notional monthly income as Rs.1800/- in the absence of cogent evidence cannot be found fault. However, as rightly argued by the learned counsel for claimants, the Tribunal has not taken into consideration the future prospects of the deceased. Hence, going by the decision of Apex Court in ***Santosh Devi vs. National Insurance Company Limited***[3], 30% is added to his income towards future prospects, in which case, his monthly income comes to Rs.2,340/- (Rs.1800/- plus Rs.540/-). The gross annual income of the deceased which will serve the purpose as multiplicand comes to Rs.28,080/- (Rs.2,340/- X 12). From this, 1/3rd is deducted towards his personal expenditure. Thus the net annual contribution of the deceased to his family comes to **Rs.18,720/-**(Rs.28,080/- x 2/3rd). Multiplier is concerned, the Tribunal selected ‘17’ having regard to the age of the deceased as 23 years. However, in ***Smt. Sarla Verma vs. Delhi Transport Corporation***[4] the Apex Court fixed ‘18’ as multiplier for the persons in the age group of 21 to 25 years. Hence, ‘18’ is accepted. Thus the compensation for loss of dependency comes to **Rs.3,36,960/-** (Rs.18,720/- X 18).

c) The Tribunal has not awarded any compensation for funeral expenses. In ***Rajesh***’s case (2 supra), the Apex Court ordained that a sum of Rs.25,000/- has to be awarded towards funeral expenses and following the same, a sum of **Rs.25,000/-** is awarded towards funeral expenses.

d) Then the Tribunal awarded Rs.15,000/- towards loss of consortium. I consider it as inadequate for the reason that the 1st claimant lost her husband at her prime age. In ***Rajesh***’s case (2 supra), the Apex Court observed that the loss of consortium can be awarded at Rs.1,00,000/-. Having regard to it and since the claimants lost her husband at an early age, compensation is enhanced to **Rs.30,000/-**.

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

Loss of dependency	Rs. 3,36,960-00
Loss of consortium	Rs. 30,000-00
Loss of estate	Rs. 1,500-00
Funeral expenses	Rs. 25,000-00
Total	Rs. 3,93,460-00

So the compensation is enhanced by **Rs.1,32,160/-** (Rs.3,93,460/- minus Rs.2,61,300/-).

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

(i) The compensation is enhanced by **Rs.1,32,160/-** (Rs.3,93,460/- minus Rs.2,61,300/-) with proportionate costs.

(ii) The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of O.P, till the date of realization. Whereas, the original compensation amount shall carry interest @ 9% per annum from the date of O.P, till the date of realization.

(iii) Respondents 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: 09.06.2016
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[1] 2001 (1) ALT 485

[2] 2013 ACJ 1403 (SC)

[3] 2012 ACJ 1428 (SC)

[4] 2009 ACJ 1298 (SC)