

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.339 of 2010

JUDGMENT:

Aggrieved by the Award dated 26.11.2008 in O.P.No.491 of 2007 passed by the Chairman, M.A.C.T.-cum-District Judge, Nizamabad (for short “the Tribunal”), the Government preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 18.04.2007, when the deceased—Kartoori Ramesh and his friend—Keshava Rao were proceeding on Hero Honda motorcycle bearing No.AP 25 L 4405 from Mattaihfarm towards Yedpally and when they reached near Dargah in Jankampet village limits, one jeep bearing No.ATJ 2064 being driven by its driver at high speed and in a rash and negligent manner dashed against the motorcycle from opposite side. Thereby the deceased fell down and received grievous injuries and succumbed to injuries on 20.04.2007 while undergoing treatment. It is averred that the accident was occurred due to the fault of jeep driver. On these pleas, the claimants filed O.P.No.491 of 2007 under Section 166 of Motor Vehicles Act (for short “MV Act”) and claimed Rs.10,00,000/- as compensation against respondents 1 to 3 who are owner of the offending jeep.

b) The second respondent filed written statement and opposed the claim denying all the material averments made in

the petition and urged to put the claimants in strict proof. He contended that there is no negligence on the part of jeep driver and in fact the motorcyclist himself by overtaking two lorries and without observing the curve on the road, dashed against the jeep and caused the accident and therefore, they are not liable to pay compensation. He further contended that motorcyclist had no valid and effective licence at the time of accident and he thus prayed to dismiss the O.P.

- c) Respondents 1 and 3 filed a memo adopting the written statement filed by the 2nd respondent.
- d) During trial, PWs.1 and 2 were examined and Exs.A1 to A10 were marked on behalf of claimants. RW1 was examined on behalf of respondents.
- e) The Tribunal after considering the evidence on record held that the driver of the jeep was responsible for the accident and awarded compensation of Rs.6,25,623/- with proportionate costs and interest @ 9% p.a. against respondents 1 to 3 under different heads as below:

Loss of dependency	Rs. 5,76,000.00
Loss of consortium	Rs. 15,000.00
Transportation and funeral	
Charges	Rs. 5,000.00
Medical expenses	Rs. 29,623.00

Total	Rs. 6,25,623.00

Hence, the appeal by Government.

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

4) Heard arguments of learned Government Pleader for Arbitration and learned counsel for respondents/claimants.

5) Challenging the award as excessive, learned Government Pleader argued that the Tribunal committed grave error in taking the notional income of the deceased as Rs.4,000/- per month though there is no satisfactory evidence to that effect and thereby the compensation for loss of dependency soared high. Learned counsel argued that the compensation for other heads is also on high side. Learned counsel further argued that deceased was said to be an agriculturist and by virtue of his death his family did not get any loss in agricultural income except his supervision and therefore, the Tribunal ought to have taken his notional income as Rs.15,000/- per year in stead of Rs.48,000/- per annum. He thus prayed to allow the appeal and re-assess the compensation.

6) Per contra, learned counsel for respondents/claimants argued that compensation awarded under different heads is a modest one and in fact the claimants deserve higher compensation but they did not file appeal and therefore, there is no need to re-assess the compensation awarded by the Tribunal.

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 motorcycle bearing No.AP 25 L 4405 and jeep bearing No.ATJ 2064 and death of the deceased are not in dispute.

a) The bone of contention is quantum of compensation. The Tribunal having taken into consideration the age of the deceased as 30 years and his occupation as agriculture fixed his monthly income as Rs.4,000/- and after deducting $\frac{1}{3}$ rd and applying multiplier of '18' arrived at loss of dependency at Rs.5,76,000/- (Rs.4,000/- x 12 x $\frac{2}{3}$ rd x 18). The submission of learned Government Pleader is that if the deceased is considered as agriculturist, his family will not lose agriculture income after his demise as the lands remain intact and they will suffer only loss of his supervision which the deceased would have done had he alive. On the basis of the said argument, the learned G.P. argued that loss of supervision charges should be taken as Rs.15,000/- p.a. instead of Rs.48,000/-. I am unable to accept this contention. It is true that with the death of the deceased, the income from agriculture was intact, but the supervisory charges cannot be accepted at Rs.15,000/- as argued by the appellants. The amount of Rs.48,000/- taken by the Tribunal towards his notional income can be equated as loss of supervisory charges because now a days, it is difficult to get an agricultural labour or supervisor for a paltry amount of Rs.15,000/-. Therefore, even if the loss of supervision alone is

taken into consideration, that can be equated to Rs.48,000/- In that view, the loss of dependency of Rs.5,76,000/- arrived by the lower Tribunal cannot be found fault.

b) Sofaras other heads are concerned, the Tribunal awarded Rs.15,000/- towards loss of consortium, Rs.5,000/- towards funeral and transportation expenditure and Rs.29,623/- towards medical expenses which, in my view, are low amounts in view of the judgment of the Apex Court in ***Rajesh vs. Rajbir Singh and others***^[1]. Since the respondents/claimants have not filed any appeal, those amounts cannot be enhanced in the present appeal filed by the Government. So, at the outset, the compensation awarded by the Tribunal under different heads cannot be said to be on high side.

9) In the result, I find no merits in the appeal and accordingly appeal is dismissed by confirming the Award passed by the lower Tribunal. No costs.

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

U. DURGA PRASAD RAO, J

Date: 13.07.2016

Murthy

^[1] 2013 ACJ 1403 SC