HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.Nos.3510/2005 & 573/2006

COMMON JUDGMENT:

These two appeals arise out of the award dated 15.09.2005, passed in O.P.No.1191 of 2003 by the learned V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad (for short "the Tribunal"). MACMA No.3510 of 2005 is filed by the United Insurance Company, who is 2nd respondent in the OP. MACMA No.573 of 2006 is filed by the claimants being dissatisfied with the award passed by the Tribunal.

2. The claimants filed the claim petition claiming a compensation of Rs.8,00,000/- on account of death of Mohd.Akbar, who died in a motor accident that occurred on 07.04.2003. The claimants are the wife, daughters and mother of the deceased.

3. The brief case of the claimants is that on 07.04.2003 the deceased was proceeding on his Scooter bearing registration No.AP28C-3503 from Hayathnagar towards Munaganur, at about 6.40 p.m, when he reached near Bennuri complex at Hayathnagar on NH.No.9, an empty TATA LMV (DCM) bearing registration No.AP13T-7339, came in opposite direction on wrong side in a rash and negligent manner and dashed the scooter of the deceased, as result, the deceased sustained grievous injuries and succumbed to injuries. The deceased was aged about 40 years, he was hale and health by the time of accident, he was working in MCH, Hyderabad and earning more than Rs.6,500/- per month.

4. The Insurance Company filed the counter denying its liability, stating that the driver of the offending DCM has no valid licence as on date of accident and his driving licence was lapsed on 21.04.2002, that the owner of

the offending DCM has violated the conditions of the policy and entrusted the vehicle to a person who was not having any valid driving licence and hence the insurance company is not liable to pay compensation.

5. On behalf of the claimants, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.6. On behalf of the Insurance Company, the insurance policy was marked as Ex.B1, and the certified copy of pay particulars was marked through Court as Ex.X1.

6. The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.6,38,680/- as against the claim of Rs.8,00,000/-.

7. The claimants are the wife, four tender aged daughters and mother of the deceased Md.Akbar, who died in an accident on 07.04.2003 when he was proceeding from Hayatnagar to Munaganur. The factum of the accidental death of the deceased on the date, time and place mentioned is not seriously controverted. The claimants claim a sum of Rs.8,00,000/- for the death of the deceased and the Tribunal awarded a sum of Rs.6.38,680/- and also interest thereon at 6% per annum. Being aggrieved by the said award, these appeals are filed.

8. Learned Counsel appearing for the claimants submits that the Tribunal erred in determining the compensation which is grossly inadequate and against the well settled principles of grant of compensation for the death of the deceased. It is submitted that the deceased was aged 42 years and was working with the Municipal Corporation of Hyderabad and satisfactory proof of his income has been produced. The Tribunal having determined the loss of dependency at Rs.7,89,600/- erred in reducing it by 20% on the ground that the first claimant being the wife of the deceased was given job on

compassionate grounds in the Corporation. It is submitted that the Tribunal also failed in awarding just and reasonable compensation for the loss of consortium and estate and also in awarding interest at 6% p.a., which is contrary to the various authorities of the Supreme Court. Learned Counsel submits that even though the claim is made for Rs.8,00,000/-, they are entitled to more than that and this Court has got the discretion of awarding just and reasonable compensation if the material on record justifies the same. In support of this contention, learned Counsel has relied upon the following authorities which say that the Court has got the discretion of awarding compensation more than that has been claimed even without there being any application for amending the claim. Learned Counsel further submits that the deduction made by the Tribunal of 20% on the ground of providing a job on compassionate grounds also is contrary to the well settled proposition as has been held by the Supreme Court in VIMAL KANWAR v. KISHORE DAN[1] wherein it is held as under:-

> "The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction."
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> "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e., while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in

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[1] (2013) 7 SCC 476

service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as “pecuniary advantage” that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.”

In RAJESH v. RAJBIR SINGH[2] the Supreme Court held as under:-

“In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the said settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if any, ignoring the claim made in the application for compensation.”

In a decision reported in NAGAPPA v. GURUDAYAL SINGH[3] the Supreme Court held as under:-

“Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.

Secondly, under Section 169, the Claims Tribunal in holding any inquiry under Section 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it

[2] 2013 ACJ 1403
[3] (2003) 2 SCC 274

thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rule 254 *inter alia* makes specific provision that Order 6 Rule 17 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is not necessary for the purpose of determining real issue between the parties. Court would grant amendment. It is also to be stated that under the M.V. Act there is no time limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.

This Court in *Sheikhupura Transport Co.Ltd. v. Northern Indian Transport Insurance Co. (1971) 1 SCC 785* observed as under:-

> "The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must be necessarily be an estimate or even partly a conjecture.
>
> The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."

Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted this claim. From 63 of the Karnataka Motor Vehicles Rates, 1989, which is for filing an application for compensation, does not provide that claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates."

9. On the other hand, learned Counsel appearing for the Insurance Company submits that the amount awarded by the Tribunal is excessive and it needs interference.

10. Having heard the submissions of learned Counsel appearing for both sides, upon perusing the impugned award and the oral and documentary evidence on record, it is established that the death of the deceased who was aged about 42 years and was working as an employee in the Corporation is not disputed. The Tribunal having taken into consideration the income of the deceased, for determining the loss of dependency has erred in deducting 20% out of it on the ground that the first claimant being the wife of the deceased has been provided job in the Corporation on compassionate grounds. The salary certificate that is produced on behalf of the claimants and which is certified by PW.3 shows that the gross salary of the deceased was Rs.6,508/- and his net salary was about Rs.4,000/-. It is also noticed from the record that the Tribunal further erred in deducting 1/3rd of his income towards personal expenses as against the requirement of deducting 1/4th in view of the fact that the deceased was maintaining a family consisting of wife, four daughters and mother. The Tribunal also failed to taken into consideration the fact that the deceased was an employee of a Corporation on regular basis and considering his age, 30% of his salary need to be added towards loss towards future income. The Tribunal also took the net salary into consideration whereas the gross salary has to be taken into account and only the statutory deductions are to be reckoned for computing the income of the deceased.

11. In view of the above, the computation of loss of dependency needs to be worked out afresh, which should be as under:-

Salary of the deceased 6,500/- + 1950/- (30% of the future prospects) = Rs.8,450/- per month or 8,450/- x 12 = 1,01,400/- per annum. As the deceased was 42 years old at the time of the death, the multiplier of 14 has to be applied, which is appropriate to the age of the deceased. The compensation would then work out to be Rs.1,01,400/- x 14 = 14,19,600/-. From Rs.14,19,600/-, a sum of Rs.3,54,900/- (1/4th on Rs.14,19,600/-) be deducted as personal expenses of the deceased, which comes to Rs.10,64,700/-.

12. In addition to the above, the claimants are entitled to a sum of Rs.15,000/- towards loss of consortium, love and affection; Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses. Total compensation comes to Rs.10,99,700/-, which can be rounded off to Rs.11,00,000/- (Rupees eleven lakhs only). The claimants shall pay the deficit court fee in the matter before the amount is withdrawn.

13. On the above compensation, the claimants are entitled to interest at 7.5% per annum from the date of petition till the deposit. With regard to the apportionment, the facts to be taken into consideration are that the first claimant/wife has been provided job and the sixth claimant/mother is aged more than 90 years, the remaining claimants are all daughters, and out of them claimants 2 and 3 are said to have been already married, claimants 4 and 5 who are the daughters are yet to be married. Keeping in view the above peculiar facts and circumstances, the apportionment is made as under:-

Out of the total compensation of Rs.11,00,000/-, the claimant No.1 being the wife is entitled to 25% and claimant Nos.2 to 6 being the daughters and mother of the deceased are each entitled to 15%. Since all became majors, the claimants are entitled to withdraw their respective shares forthwith without furnishing any security.

14. In the result, M.A.C.M.A.No.3510 of 2005 filed by the Insurance Company is dismissed and M.A.C.M.A.No.573 of 2006 filed by the Claimants is allowed. Miscellaneous petitions, if any, pending in these appeals shall stand closed.

M.S.K.Jaiswal, J

Date: 22nd June, 2017
Dsr/smr