

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CMA No.555 of 2004

and

Cross Objections (SR) No.42674 of 2004

Common Judgment:

Both the Insurance Company and the claimants have challenged the Award dated 27.08.2003 in O.P.No.537 of 1999 passed by the Chairman, MACT-cum-Additional District Judge, Nizamabad (for short “the Tribunal”), the former in the form of instant appeal and the latter in the form of cross-objections.

2) Hereinafter, the parties are referred as they were arrayed before the lower Tribunal.

3) The factual matrix of the case are thus:

a) On 28.06.1999, the deceased—V.V.L.Subrahmanyam was travelling on the scooter bearing No.AP 25 A 2758 as a pillion rider and one S.Shettyram was driving the scooter. When they reached near District Police Office, Yellammagutta, Nizamabad, one tractor-cum-trailor bearing No.ATJ 8529 and ATJ 5431 respectively being driven by its driver at high speed and in a rash and negligent manner, dashed against the scooter. In the resultant accident, the driver of the scooter and deceased fell down and the front wheel of the tractor ran over the deceased resulting in his instantaneous death. Thereafter, the said tractor dashed to another motor cycle bearing No.AP 25 B 4399, who was coming behind the scooter. It is averred that the accident was occurred

due to rash and negligent driving by the driver of tractor-cum-trailer. On these pleas, the claimants, filed O.P.No.537 of 1999 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V.Act”) against respondents 1 and 2, who are the owner and insurer of the crime vehicle and claimed Rs.20,00,000/- as compensation.

b) Respondent No.1/owner though made his appearance, did not file counter.

c) Respondent No.2 filed counter and denied all the material averments made in the petition and urged to put the claimants in strict proof of the same. R2 traversed the plea that the accident was occurred due to rash and negligent driving by the driver of tractor-cum-trolley. Finally R2 contended that claim is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. RWs.1 and 2 were examined and Exs.B1 was marked on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence awarded a sum of Rs.12,35,912/- with proportionate costs and interest at 9% p.a. against respondents 1 and 2 under different heads as follows:

Loss of earnings of deceased	Rs.12,20,912/-
Loss of consortium	Rs. 5,000/-
Loss of love and affection	Rs. 5,000/-
Funeral expenses	Rs. 5,000/-

Total	Rs.12,35,912/-

Hence the appeal by Insurance Company.

4) It may be noted that the tractor-cum-trailor after hitting the scooter, had also hit the motorcycle bearing No.AP 25 B 4399. The rider of the said motorcycle filed O.P.No.584 of 1999 claiming compensation of Rs.2,00,000/-, wherein a sum of Rs.26,000/- was awarded by the Tribunal. Aggrieved, he preferred CMA No.3316 of 2004 and the same was partly allowed by this Court on 03.01.2014.

5) Heard arguments of Sri Kota Subba Rao, learned counsel for Appellant/Insurance Company and Sri P.Radhive Reddy, learned counsel for respondents 1 to 4/cross-objectors. There is no representation for respondent No.5 in the appeal.

6) Learned counsel for appellant would fairly concede that since the appellant had not filed appeal against the Award in O.P.No.584 of 1999 a connected matter, the appellant cannot raise contentions on the fault of the tractor driver, the liability of the Insurance Company etc., and therefore, in this appeal, the appellant is confining his argument only in respect of the rate of interest. Learned counsel submitted that the Tribunal awarded interest @ 9% p.a which is highly exorbitant and therefore, the same may be reduced suitably.

7) Per contra, learned counsel for respondents/cross-objectors while supporting the Award as well as the rate of interest, would argue that rate of interest was quite reasonable one and therefore, there was no need to reduce the same. So far as cross-objections were concerned, his

argument was that the Tribunal awarded paltry amount of Rs.5,000/- each under the heads loss of consortium, funeral expenses and loss of love and affection and as per *Rajesh and others vs. Rajbir Singh and others*¹, the claimants are entitled to much higher compensation under those heads. He thus prayed to dismiss the appeal and allow the cross objections.

8) In reply, learned counsel for appellant Sri Kota Subba Rao, would argue that though in *Rajesh's* case (1 supra), the compensation of Rs.1,00,000/- was awarded for loss of consortium and Rs.25,000/- for funeral expenses, but in a subsequent judgment a Coordinate Bench of the Apex Court in *Ramilaben Chinubhai Parmar vs. National Insurance Co.*², awarded a consolidated amount of Rs.50,000/- under the head conventional amounts and therefore, if this Court prefers to enhance the compensation under those heads, the latest decision may be followed.

9) In the light of above rival arguments, the points for determination are:

- 1) *Whether the rate of interest awarded by the Tribunal is excessive?*
- 2) *Whether the respondents/cross-objectors deserve enhancement of compensation for the conventional heads, funeral expenses, loss of consortium and loss of love and affection?*
- 3) *To what relief?*

10) **POINT No.1:** As can be seen from the Award, the Tribunal granted interest @ 9% per annum from the date of claim petition till

¹ (2013) 9 SCC 54

² 2014 ACJ 1430 SC

realisation which is now under challenge. It must be noted that in the CMA No.3316 of 2004, which arose out of connected O.P.No.584 of 1999, this Court in its judgment dated 03.01.2014, while enhancing the compensation awarded interest @ 9% p.a on the original compensation awarded by the Tribunal and 6% p.a on the enhanced compensation amount. The present appellant/Insurance Company is a party to the said appeal. Since in the connected matter this Court approved interest @ 9% p.a on the original compensation awarded by the lower Tribunal, I see no reason to decrease the rate of interest in the present matter on the original compensation amount of Rs.12,35,912/- awarded by the Tribunal. Whether the respondents/claimants are entitled to enhancement of compensation or not has to be seen in the point No.2 infra.

11) **POINT No.2:** The Award shows, the Tribunal awarded Rs.5,000/- each for the conventional heads i.e, funeral expenses, loss of consortium and loss of love and affection. In *Rajesh's* case (1 supra), the Apex Court ordained that funeral expenses shall be paid at Rs.25,000/- and loss of consortium at Rs.1,00,000/-. However, as rightly submitted by the learned counsel for appellant/Insurance Company, in a subsequent decision in *Ramilaben Chinubhai Parmar's* case (2 supra), the Apex Court awarded Rs.50,000/- as conventional amount. In that view of the matter, the conventional amount of Rs.15,000/- awarded by the Tribunal is enhanced to **Rs.50,000/-**.

12) So at the outset, compensation is enhanced by **Rs.35,000/-** (Rs.12,70,912/- minus Rs.12,35,912/-).

13) In the result, the CMA No.555 of 2004 filed by the Insurance Company is dismissed and Cross objections (SR) No.42674 of 2004 filed by the respondents/claimants are allowed and compensation is enhanced by **Rs.35,000/-**. The original compensation of Rs.12,35,912/- shall carry interest @ 9% p.a while the enhanced compensation of Rs.35,000/- shall carry interest @ 6% p.a from the date of petition till the date of realisation. No order as to costs.

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

Date: 02.02.2017
scs

U. DURGA PRASAD RAO, J

