THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 474 OF 2011
&
M.A.C.M.A. (SR) No.16401 OF 2011

COMMON JUDGMENT:

M.A.C.M.A. No. 474 OF 2011:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 26.10.2010, passed by the learned XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad, in M.V.O.P.No.1164 of 2008, awarding compensation of Rs.2,18,000/- together with interest at 7.5% per annum.

2. The claimants, who are the sons and daughter of one A.Narayana (hereinafter referred to as 'the deceased'), filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.5,00,000/- on account of the death of the deceased in a motor vehicle accident occurred on 12.03.2008.

3. The brief facts of the case are that on 12.03.2008 at about 5.30 p.m. near Narsimha Talkies, opposite Indian Petrol Pump at Miyapur, Hyerabad, while the deceased was going by walk by the side of the road and when he reached near the theatre, at that time one Auto bearing No.AP23W 2278 driven by its driver with high speed and in a rash and negligent manner proceeding from Kukatpally side and

dashed the deceased, as a result the deceased sustained fatal injuries and died on the spot.

The police of Miyapur P.S. registered the same as a case in Crime No.77 of 2008 against the driver of auto under Section 304-A IPC.

The petitioners stated that the deceased was the only earning member in their family and they sustained loss of income due to the sudden demise of the deceased and prayed the Court to grant compensation.

4. The respondents 1 and 2 – the R.C. holder and the Policy holder, remained *ex parte* before the Tribunal. The 3rd respondent – insurance company filed their counter before the Tribunal.

5. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 and 2 were examined and Exs.A.1 to A.4 got marked. On behalf of the 3rd respondent, RWs 1 and 2 were examined and Exs.B.1 to B.3 got marked.

6. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the auto and in that accident, the deceased was died, and awarded compensation of Rs.2,18,000/- along with interest at 7.5% per annum.

7. Not satisfied with the compensation awarded by the Tribunal, the petitioners, who are the legal representatives of the deceased, preferred the present appeal.

8. Apparently, the Tribunal has taken the monthly income of the deceased at Rs.3,000/- per month. The age of the deceased at the time of accident was 56 years and he is a fruit vendor. The Tribunal has taken Rs.36,000/- as annual income and deducted 1/3rd towards personal expenses of the deceased and the dependency comes to Rs.2,16,000/-. The Tribunal also awarded Rs.2,000/- towards funeral expenses and granted compensation of Rs.2,18,000./-.

9. The claimants are disputing the grant of the amounts saying that they are entitled for enhancement of compensation on the ground that the deceased was aged about 56 years at the time of accident and the claimants are the dependants of the deceased. The deceased is a fruit vendor and he used to earn Rs.6,000/- per month. In support of their contention, PWs 1 and 2 were examined. Moreover, the Tribunal has taken Rs.3,000/- per month as a notional income, which is bad in law.

10. The deceased was aged about 56 years at the time of accident and he is a fruit vendor in Miyapur area of Hyderabad and he used to earn Rs.6,000/- per month, but the Tribunal has taken Rs.3,000/- per month as his income. The learned counsel for the appellants relied on a decision

reported in *Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited*[1], wherein the Hon'ble Supreme Court held that going by the present state economy and rising prices in agricultural products, it inclined to believe that the vegetable vendor reasonably capable of earning Rs.6500/- per month. In the present case on hand, the petitioner is a fruit vendor and as per the evidence of PWs 1 and 2, it supports the plea of the learned counsel that the deceased is a fruit vendor and earning Rs.6,000/- per month. There is no reason for the Tribunal to take notional income of Rs.3,000/- per month of the deceased. In view of the evidence and as per the decision of the Hon'ble Supreme Court stated supra, this Court found it is just and reasonable to hold that the deceased being a fruit vendor, would earn Rs.6,000/- per month.

11. This Court has taken the monthly income of the deceased at Rs.6,000/- per month and it comes to Rs.72,000/- per annum and if 1/3rd is deducted towards his personal expenses, it would be Rs.48,000/-. The deceased was aged about 56 years at the time of accident. In view of the decision in *Sarla Verma and others Vs. Delhi Transport Corporation and another*[2], the multiplier for the age group of 56 to 60 years is "9". Therefore, the total loss of dependency comes to Rs.48,000/- X 9 = Rs.4,32,000/-.

---

[1] (2014) 2 SCC 735
[2] (2009) 6 SCC 121

12. The learned counsel for the appellants contended that the appellants are entitled for 10% of the annual income as future prospectus. In view of the decision of the Hon'ble Apex Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others*[3], the appellants are entitled 10% of the future prospectus. Therefore, an amount of Rs.4,32,000/- X 10/100 = Rs.43,200/- is awarded under the head of future prospectus.

13. As the deceased was aged between 50 to 60 and as per the judgment of the Hon'ble Supreme Court in *Pranay Sethi's case* (2 supra), the appellants are entitled Rs.30,000/- under the conventional head for loss of estate and funeral expenses. In total, the appellants are entitled for Rs.4,32,000/- + Rs.43,200/- + Rs.30,000/- = Rs.5,05,200/-.

14. In view of the decision of the Hon'ble Apex Court in *Nagappa Vs. Gurudayal Singh and others*[4], in the M.V. Act, there is no restriction that compensation could be award only upto the amount claimed by the claimants. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.2,18,000/- to Rs.5,05,200/-. However, the appellants are liable to pay the Court Fee on the excess amount of Rs.2,87,200/-. The interest rate and apportionment of compensation as ordered by the Tribunal are hereby confirmed.

---

[3] 2017(6) ALD 170 (SC)
[4] (2003) 2 SCC 274

15. In the result, the appeal is allowed to the extent indicated above. No order as to costs.

M.A.C.M.A. (SR) No.16401 OF 2011:

16. This appeal is filed by the appellant/3rd respondent-insurance company, aggrieved by the award dated 26.10.2010, passed by the learned XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, Hyderabad, in M.V.O.P.No.1164 of 2008, wherein the Tribunal ordered that the respondents 1 to 3 therein are jointly and severally liable to pay the compensation amount and the appellant is directed to deposit the amount within one month from the date of the order and he is at liberty to recover the same from the respondent No.2 therein.

16. This Court on 30.04.2011 in MACMA.MP.No.1722 of 2011, which is filed for condoning the delay, permitted the learned counsel for the petitioner/appellant to take personal notice on the respondents 1 to 5. On 09.03.2015, this Court again permitted the learned counsel for the petitioner/appellant to take out personal notice on respondents 1 to 3 and 5 through registered post with acknowledgement due, failing which it was ordered that the appeal shall stand dismissed without reference to the Court as against respondent Nos.1 to 3 and 5.

17. As the order dated 09.03.2015 was not complied with, the said order was given effect to and thereby the appeal

against the respondents 1 to 3 and 5 stands dismissed. In spite of granting several adjournments since 21.09.2015, the appellant failed to take steps against respondents 1 to 3 and 5. Since the main appeal was dismissed against respondent No.5, who is a policy holder and from whom the appellant got liberty to recover the compensation awarded amount, no purpose will be served by keeping the appeal pending only against respondent No.4, who is a R.C. holder of crime vehicle bearing No.AP23W 2278.

18. In these circumstances, MACMA.MP.No.1722 of 2011 is dismissed and consequently, MACMA(SR) No.16401 of 2011 stands rejected. No order as to costs.

19. Miscellaneous Petitions, if any, pending in these appeals shall stand closed.

JUSTICE M.GANGA RAO

24-08-2018
anr

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 474 OF 2011
&
M.A.C.M.A. (SR) No.16401 OF 2011

24-08-2018

anr