HON'BLE MS JUSTICE J. UMA DEVI

MACMA.Nos. 747 and 904 of 2007

COMMON JUDGMENT:

MA.CMA.No.747 of 2007 is preferred by the claimants, in O.P.No.564 of 2003, challenging the order passed by the Motor Accident Claims Tribunal - cum – II Additional District Judge, Ranga Reddy District, by award dated 08.12.2006.

Whereas MACMA.No.904 of 2007 is filed by respondent No.1 – New India Assurance Company Limited (Insurance Company) against the very same award passed in O.P.No.564 of 2003 disputing the quantum of compensation.

Parties hereinafter will be referred to as petitioners and respondents as they are arrayed in O.P.No.564 of 2003 for the sake of convenience.

Petitioner No.1 is the wife, petitioner Nos.2 and 3 are minor children and petitioner Nos.4 and 5 are the parents of late K.Ranjit Kumar respectively. The claimants filed the claim petition seeking compensation of Rs.10,00,000/- for the death of Sri K.Rajit Kumar in a road accident on 28/29.12.2002 at 00.30 hours which occurred near Panjagutta Cross Road while the deceased was proceeding towards his house situate at Kalyan Nagar Colony, Erragadda. Their case was that, while the deceased K.Rajit Kumar was proceeding near Panjagutta Cross Road on a motor cycle, the offending lorry belonging to respondent Nos.2

and 3, and insured with respondent No.1, came in a rash and negligent manner and hit the motorcyclist and such accident resulted his instantaneous death. The said accident was witnessed by a Police Constable of Panjagutta Police Station, based on his report, a case in Crime No.1472 of 2002 was registered against the driver of the offending lorry and was investigated. After completion of investigation, charge sheet under Section 304-A IPC was filed against the driver of the lorry due to whose fault above mentioned accident took place. The deceased was working as Marketing Executive in VSS Laser Graphics, Red Hills, Lakdikapool, and was earning Rs.8,500/-. He was also doing private job works in Laser printing and was earning Rs.4,000/- to Rs.5,000/- p.m.

The Tribunal framed the following issues for determination:

> "1. Whether the accident took place on 28/29.12.2002 at 0030hrs. near Panjagutta cross roads, on account of the rash and negligence driving of the driver of lorry bearing No.AP 28T 7836 which dashed the motor bike bearing No.AP 9AL 3091?
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> 2. Whether the petitioner is entitled to claim any compensation, if so, for how much, from which respondent?
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> 3. To what relief?

The claimants examined P.Ws.1 to 3 and marked Exs.A1 to A8 to prove their case. On behalf of the insurance company, single witness was examined, but the policy of the crime lorry was marked as Ex.B.1.

The Tribunal on appreciation of oral and documentary evidence came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP 28 T 7836. While computing the quantum of compensation, the Tribunal took the notional income of the deceased at Rs.6,000/- p.m. as the deceased was aged 30 years and studied ITI. On deducting 1/3rd of his income towards his personal expenditure, monthly contribution of income to his family was arrived at Rs.4,000/- p.m Rs.48,000/- p.a. (4,000 X 12) was arrived towards his annual income contribution to his family taking into consideration the socio-economic conditions of his family. The Tribunal by multiplying annual contribution with low multiplier computed the future loss of dependency at Rs.6,72,000/- (Rs.48,000/- x 14). The Tribunal awarded Rs.10,000/- to petitioner No.1 towards loss of consortium; Rs.16,000/- towards loss of estate; and Rs.2,000/- towards funeral expenses. Thus, in all, the claimants were awarded with total compensation of Rs.7,00,000/- with interest at 7.5% p.a. from the date of filing of the petition to till realization. Having not been satisfied with the compensation awarded by the Tribunal, MA.CMA.No.747 of 2007 was filed by the claimants, MACMA.No.904 of 2007 was filed by the Insurance Company with main grievance that the compensation of Rs.6,72,000/- awarded by the Tribunal is excessive and exorbitant.

Learned Counsel for the claimants contended that Tribunal erred in applying multiplier '14' and that the appropriate multiplier to be adopted was '18'. His further contention was that the Tribunal failed to appreciate Ex.A.7- salary certificate and had taken monthly income of the deceased at Rs.6,000/-p.m. without any basis. His another contention was that the Tribunal ought to have taken the probable future income of the deceased atleast to an extent of 30%, and that he placed reliance on a judgment rendered by the Apex Court in **Santosh Devi Vs. National Insurance Co. Ltd.**[1] in support of the above mentioned contention. It was contended by him that the Tribunal ought to have awarded Rs.1.00 lakh towards consortium as she lost her life companion in her young age and that a paltry sum of Rs.2,000/- was awarded towards funeral expenses. These were the main grounds urged on behalf of the claimants by their counsel.

Learned Counsel appearing for the Insurance Company submits that the amount awarded by the Tribunal is highly excessive and exorbitant and that the Tribunal, without any basis, assessed the income of the deceased at Rs.6,000/-p.m. The Tribunal though rightly discarded Ex-P.7 – salary certificate which has not been proved, it has wrongly assessed his monthly income at Rs.6,000/- p.m. based on the self drawn presumption for which there is no basis at all.

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The evidence of PW.3 clinchingly establishes that the accident in question has occurred near a cross-road junction at Panjagutta. His evidence was that while the deceased was proceeding on a motor cycle near panjagutta police station, the offending lorry took left turn suddenly without following traffic signals, dashing the motor cycle of the deceased and, as a result of it, the deceased fell down and the front tyre of the lorry ran over him and it resulted his instantaneous death. The Tribunal, on close scrutiny of the evidence of PW.3 and other supporting documentary evidence, recorded a finding that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No. AP 28 T 7836 by its driver.

The Motor Vehicle Inspector inspected the crime vehicle and opined that the accident had not occurred due to mechanical defect and issued Ex.A.4, MVI report. The finding given by the Tribunal that the driver of the crime vehicle was at fault needs no intervention as such finding was on thorough appreciation of the evidence of PW.3 whose evidence is corroborated by the documentary evidence.

Coming to the issue relating to the quantification of compensation regarding which the parties herein have filed two different appeals ventilating their respective grievances is concerned, the petitioners have relied on Exs.P.7 and P.8 and evidence of PW.2.

PW.2, the proprietor of VSS Laser Graphics, stated that the deceased was working as a marketing executive on a consolidated salary of Rs.8,500/- p.m. prior to his death. But, no proof was produced by PW.2 to show that deceased was paid Rs.8,500/- p.m. No acquittance register was produced by PW.2 to prove that a sum of Rs.8,500/- was paid to the deceased towards his monthly salary. The Tribunal upon consideration of above mentioned aspects has not taken Ex.A.7 into consideration, while computing loss of income, however, upon consideration of age of the deceased on his technical qualifications i.e. ITI, the Tribunal assessed his income mentioning as Rs.6,000/- p.m. and on deducting 1/3rd of his income towards his personal expenses and assessing his loss of monthly income on applying the multiplier '14' the future loss of dependency was assessed at Rs.6,72,000/- since the deceased was aged about 30 years by the date of his death. The compensation awarded by the Tribunal under the head of loss of dependency/loss of consortium of the deceased does not call for any interference.

The Tribunal has awarded meagre compensation of Rs.2,000/- towards funeral expenditure without taking into consideration the amount required to be spent for funeral expenditure and the obsequies ceremonies of the deceased. The Tribunal has awarded meagre compensation of Rs.10,000/- under the loss of consortium and Rs.16,000/- towards loss of estate. The Tribunal has completely ignored the fact that the deceased died leaving behind him the first appellant-the widow, his parents and two minor children, who lost his love and affection and support. Therefore, this Court feels that it is appropriate to enhance the funeral expenditure to Rs.5,000/- and the compensation under the head of loss of consortium at Rs.25,000/- and the compensation amount under the head of loss of estate is enhanced to Rs.40,000/-.

Accordingly, the total amount of compensation is worked out as under:

loss of dependency/ loss of income of the deceased	Rs. 6,72,000
Conventional amount for loss to estate	Rs. 40,000
Conventional amount loss of consortium awarded to the widow of the deceased	Rs. 25,000
For funeral expenses	Rs. 5,000
Total	Rs. 7,42,000

In the light of the above mentioned discussion, the award passed by the Tribunal is modified by enhancing compensation to Rs. 7,42,000/- from Rs. 7,00,000/- by allowing the appeal filed by the claimants.

In view of the findings recorded above by me holding that reasonable/adequate compensation is awarded to the claimants under the heads loss of consortium, loss of estate, funeral expenditure. The appeal filed by the Insurance Company contending that excess compensation is awarded to the claimants deserves to be dismissed and the same is hereby dismissed accordingly.

Miscellaneous applications, if any, pending in the appeals, shall stand closed. There shall be no order as to costs.

J. UMA DEVI,J

Date:
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