THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 2518 OF 2014
&
M.A.C.M.A. No. 2537 OF 2014

COMMON JUDGMENT:

The appellants-claimants filed MACMA No.2518 of 2014 whereas the Insurance Company filed MACMA No.2537 of 2014 under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 07.02.2014 passed in M.V.O.P.No.334 of 2011 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Karimnagar, granting compensation of Rs.16,10,260/- against the claim of Rs.25 lakhs for the death of one Lingampelli Shankar (hereinafter referred to as 'the deceased') in the motor accident occurred on 23.03.2011.

2. For the sake of convenience, the parties are referred to as they were arrayed before the Tribunal in M.V.O.P.No.334 of 2011.

3. The claimants, who are the wife, children and parents of the deceased, filed claim petition under Section 166(1)(c) of the M.V. Act, 1988, alleging that on 23.03.2011 the deceased went to attend his work and after completion of the work, when he was returning to home on his two wheeler bearing No.AP15N 9164 at about 9.00 p.m., a lorry bearing No.AP05Y 6869 dashed the deceased from his behind near Pownoor

auto stand at Srirampur colony, as a result, the deceased fell down and sustained injuries. Immediately, he was shifted to Government Hospital, Mancherial, and from there he was shifted to Karimnagar where the doctors declared him as brought dead.

The Srirampur Police, on receipt of information about the accident, registered a case in Crime No.35 of 2011 for the offence punishable under Section 304-A of IPC against the driver of the offending vehicle and on completion of investigation, they filed charge sheet before the Judicial Magistrate of I Class, Mancherial.

Claimants further state that the deceased was hale and healthy, aged 53 years, used to work as Coal Filler in Singareni Collieries Company Limited and was getting salary of Rs.30,000/- per month. Due to sudden demise of the deceased, they lost their livelihood. Hence, they claimed compensation of Rs.25 lakhs for the death of the deceased.

4. The respondents 1 and 2 remained *ex parte*.

5. The respondents 3 and 4 filed a common counter denying the averments of the claim petition and specifically alleging that the accident was occurred due to the negligence on the part of the deceased himself in riding his motorcycle and there was no negligence on the part of the driver of the offending lorry. It is further stated that the driver of the offending lorry had no valid driving license to drive the lorry,

thus, there was breach of terms and conditions of insurance policy. Hence, they are not liable to pay compensation.

6. Based on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident had occurred due to rash and negligent driving of Lorry bearing No.AP05Y 6869 by the respondent No.1?

2) Whether the petitioners are entitled for compensation, if so, to what amount and from which of the respondents?

3) To what relief?

7. During the course of trial, the claimants got examined PWs 1 to 3 in support of their claim and got marked Exs.A.1 to A.6. On behalf of the respondents, no oral evidence was adduced, but a copy of the insurance policy was marked as Ex.B.1 with consent.

8. The Tribunal, based on the evidence of PWs 1 and 2 coupled with the documentary evidence of Exs.A.1 to A.5 held that the accident was occurred due to rash and negligent driving of the offending lorry by its driver resulting in injuries to the deceased and later he was succumbed to the injuries. In the absence of any contrary evidence led by the respondents, the said finding of the Tribunal could not be found fault with. Hence, the contention of the learned counsel for the respondent-Insurance Company that there was no rash and negligence on the part of the driver of the

offending vehicle and due to negligence of the deceased in driving the motorcycle, the accident was occurred, could not be accepted.

9. The further contention of the learned counsel for the respondent-insurance company that the driver of the offending lorry had no valid driving licence to drive the lorry and thereby contravened the terms and conditions of Ex.B.1 policy, could not be countenanced due to lack of evidence in support of the said contention.

10. The appellants-claimants originally claimed compensation of Rs.15 lakhs. Later, they filed I.A.No.519 of 2013 seeking enhancement of compensation to Rs.25 lakhs by amending the claim petition and the same was allowed on 17.04.2013. The respondents also filed petition under Section 170 of the M.V. Act to contest the claim.

11. As regards quantum of compensation, the Tribunal had taken the monthly income of the deceased as Rs.13,740/- per month and the annual income of the deceased was arrived at Rs.1,64,880/- per annum. 1/4th thereof was deducted by the Tribunal towards personal expenses of the deceased. Further, the Tribunal after considering the Service Register of the deceased which shows that the date of birth of the deceased was 25.12.1957, held that the deceased was aged about 53 years at the time of accident and applied the

multiplier '11'. Thereby, the Tribunal arrived the loss of dependency at Rs.13,60,260/- (Rs.1,23,660/- x 11).

12. In addition, the Tribunal granted Rs.1 lakh towards loss of consortium to the 1st appellant, Rs.1,25,000/- towards loss of love and affection to appellants 2 to 6 and Rs.25,000/- towards funeral expenses. Thus, the Tribunal granted the total compensation of Rs.16,10,260/- with costs and interest @ 7.5% per annum payable by the respondents jointly and severally within 30 days from the date of receipt of the copy of the award.

13. The learned counsel for the claimants would contend that the Tribunal grossly erred in taking the monthly income of the deceased as Rs.13,739.36 ps. contrary to the evidence of PW3 and Ex.A.6 salary certificate, which prove that the deceased used to get gross monthly salary of Rs.28,137.98 Ps. Hence, the Tribunal ought to have taken the monthly income of the deceased as Rs.28,137.38 Ps., when there is no contrary evidence on record. As the deceased was a salaried person and fixed wage earner, the appellants are entitled for 15% of the annual income of the deceased towards future prospects as the deceased was aged 53 years.

14. Learned counsel for the Insurance Company would fairly concede that MACMA No.2537 of 2014 may be closed.

15. In the facts and circumstances of the case, having heard the rival contentions of the learned counsel for the parties and perused the record, this Court is of the view that the Tribunal ought to have taken the average gross salary of the deceased as Rs.25,000/- per month as the deceased used to get the monthly salary of Rs.30,424/- as per the evidence of PW-3 who also deposed that the income of the deceased depends on the number of days he worked in a month. Further, as the deceased was aged about 53 years at the time of the accident and was a fixed wage earner, the claimants are entitled for 15% of the income of the deceased towards future prospects in view of the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***[1]. Thus, the monthly income of the deceased works out to Rs.28,750/- [Rs.25,000 + (Rs.25,000 * 15/100)]. Further, the Tribunal has rightly deducted 1/4th of the income of the deceased towards personal expenses, in view of the decision of the Hon'ble Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation***[2]. After deducting an amount of Rs.7188/- towards personal expenses, the net salary of the deceased could be Rs.21,562/-. Further, as the deceased was aged 53 years at the time of his death, the Tribunal has rightly applied the multiplier '11' in view of the decision of the Hon'ble Supreme Court in ***Sarla Verma (2 supra)***. Hence, the loss of

[1] 2017 Law Suit (SC) 1093
[2] 2009 (6) SCC 121

dependency comes to Rs.28,46,184/- (Rs.21,562/- X 12 X 11).

16. Further, in view of the decision of the Hon'ble Supreme Court in the case of ***Pranay Sethi (1 supra)***, the claimants are entitled for Rs.70,000/- under conventional heads i.e. Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium to the first claimant and Rs.15,000/- towards funeral expenses.

17. Accordingly, the appellants-claimants are entitled for the enhanced compensation of Rs.29,16,184/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization.

18. Though the compensation claimed by the claimants before the Tribunal was only Rs.25,00,000/-, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others*[3]*,*** in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.29,16,184/-. However, the claimants shall pay the difference of Court Fee for the excess amount of Rs.4,16,184/-.

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[3] (2003) 2 SCC 274

19. Accordingly, MACMA No.2518 of 2014 is partly allowed and MACMA No.2537 of 2014 is dismissed.

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

JUSTICE M.GANGA RAO

21-12-2018
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