**(2013) 11 AP CK 0064**

**In the Andhra Pradesh High Court**

**Case No :** M.A.C.M.A. No. 370 of 2009

Batta Yellaiah and Others — APPELLANT

Vs

B. Ramesh and Another — RESPONDENT

**Date of Decision :** 28-11-2013

**Acts Referred:**

**Citation :** (2013) 11 AP CK 0064

**Hon'ble Judges :** U. Durga Prasad Rao, J

**Bench :** Single Bench

**Advocate :** Jayanti S.C. Sekhar, for the Appellant; N.V. Jagannath, for the Respondent

**Final Decision :** Partly Allowed

# Judgement

U. Durga Prasad Rao, J.—Challenging the quantum of compensation awarded in O.P. No. 661 of 2005 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, at Warangal (for short "the Tribunal") as inadequate, the claimants preferred the present M.A.C.M.A. The factual matrix of the case is thus:

a) The 1st and 2nd claimants are the parents and 3rd claimant is the minor sister of the deceased - Batta Nageshwar Rao of Malluru Village in Warangal District. Claimants'' case is that the deceased was 18 years old and was working as Hamali in Sree Sai Rice Mill, Mallur on a monthly salary of Rs. 3,000/-. Besides, by vending milk he was earning Rs. 1,000/- per month and was contributing his earnings to his family. While so on 02.03.2005 the deceased went to Warangal on his personal work and on that night, he boarded a Commander Jeep bearing No. AP 36 V 7403 at Warangal to return home. On the way at about 9:00 p.m., when the said Jeep reached Thimmapet Cross roads, the driver of the Jeep drove the same at high speed and in a rash and negligent manner and lost control over vehicle and consequently the Jeep turned turtle, due to which the deceased and other passengers fell down and received grievous injuries. Immediately, the deceased and other injured were shifted to M.G.M. Hospital, Warangal. While undergoing treatment, the deceased died on 03.03.2005. It was averred that the driver of Commander Jeep was responsible for the accident. It is further averred that due to sudden and untimely death of the deceased, the claimants lost their supporter. On these pleas, the claimants filed O.P. No. 661 of 2005 against respondents 1 and 2 who are the owner and insurer of the offending Jeep and claimed compensation of Rs. 3,00,000/- under different heads.

b) The 1st respondent remained ex parte.

c) The 2nd respondent/Insurance Company filed counter and opposed the claim denying the entire case of the claimants.

d) The judgment of the Tribunal shows that during trial, P.Ws. 1 and 2 were examined and Exs. A. 1 to Ex. A. 6 were marked on behalf of claimants. Respondent No. 2 did not adduce any evidence.

e) The judgment would further show that having regard to the eye witness account of P.W. 2 and the supporting documents Ex. A. 1 -F.I.R. and Ex. A. 2 - charge sheet, the Tribunal held that the driver of the Jeep was responsible for the accident. Then compensation is concerned, the Tribunal fixed the notional income of the deceased as Rs. 15,000/- per annum and taking his mother''s age as 35 years, since the deceased was Bachelor, the Tribunal selected a multiplier ''16''. After deducting 1/3rd from his notional annual income towards personal expenditure, the Tribunal arrived at the net loss of earnings of the deceased as Rs. 1,60,000/- (Rs. 10,000/- X 16) and granted the said amount as loss of dependency. The Tribunal further granted Rs. 15,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses and transportation charges. Thus, the Tribunal granted a total compensation of Rs. 1,80,000/- to the claimants. Challenging the aforesaid compensation as grossly inadequate, the claimants preferred the present appeal.

2. Heard arguments of both sides.

3. Learned counsel for appellants argued that the deceased was a young and able-bodied person aged 18 years and was working as Hamali in Sai Rice Mill and was earning Rs. 3,000/- per month. Besides by vending milk he was also earning Rs. 1,000/-. Despite the claimants produced Ex. A. 6-letter issued by the owner of Sree Sai Mini Modern Rice Mill, Mallur on his letter head, the Tribunal did not take it into consideration and instead, fixed his notional income at a low rate of Rs. 15,000/- per annum and accordingly awarded the compensation for loss of dependency at Rs. 1,60,000/- which is a low amount. He thus argued that Rs. 4,000/- or a reasonable amount may be taken as the monthly earnings of the deceased. He further argued that the compensation granted towards loss of estate and funeral expenses is also grossly low and the interest awarded at 6% per annum is also low. Thus, he prayed for enhancement of the compensation.

4. Per contra, opposing the appeal learned counsel for 2nd respondent submitted that there is no cogent evidence in this case regarding the earnings of the deceased, in as much as, though Ex. A. 6-letter said to have been issued by M/s.

 

Sree Sai Mini Modern Rice Mill was produced to show as if the deceased worked as Hamali in that rice mill, no responsible person representing the rice mill, such as Proprietor or Manger was examined to prove the said document. Similarly, the claimants have not produced any proof in support of their claim that the deceased was vending milk. Considering all these, he argued, the Tribunal rightly fixed the notional income of the deceased as Rs. 15,000/- per annum following the Second Schedule of the Motor Vehicles Act, 1988 (for short "the Act") and accordingly fixed the compensation for loss of dependency. He further argued that the Tribunal has also granted adequate compensation under the heads loss of estate and funeral expenses. He submitted that since the compensation granted under different heads is just and reasonable, there is no need to interfere with the same in the appeal. He thus, prayed for dismissal of the appeal.

5. In the light of above divergent arguments, now the point for consideration is:

Whether the judgment of the Tribunal is legally and factually sustainable?

6. POINT: Regarding the earnings of the deceased, the claim of the appellants is that he was working in Sai Rice Mill, Mallur as Hamali and was earning Rs. 3,000/- per month. Besides, by vending milk he was earning Rs. 1,000/- per month and was contributing his earnings to his family. Then proof is concerned, the claimants filed Ex. A. 6-certificate said to be issued by Y. Mohan Rao of M/s. Sree Sai Rice Mill, Mallur wherein it was mentioned that the deceased worked as Hamali in the said rice mill from 10.01.2004 to 01.02.2005 and he was paid monthly salary of Rs. 3,000/-. As rightly observed by the Tribunal, the appellants have not examined the said Mohan Rao who issued Ex. A. 6. Hence there was no proper proof for the income of the deceased. Similarly there was no proof regarding the earnings of the deceased by vending milk. Considering these aspects, the Tribunal fixed his notional income as Rs. 15,000/- per annum and accordingly computed the compensation for loss of dependency. Therefore, the method adopted by the Tribunal cannot be found fault.

7. So far the compensation for loss of estate is concerned, the Tribunal has granted Rs. 15,000/-. In my considered view, the compensation under this head is inadequate. The compensation under the head loss of estate comes under the main head general damages. Loss of consortium, pain and suffering, loss of estate etc., which come under General Damages are non-pecuniary damages and they need not be specifically pleaded and proved and they are implied by the law. In such cases, the Tribunal having regard to the facts and circumstances can grant adequate compensation. If the claim is one u/s 163A of the Act, the Tribunal can resort to Second Schedule of the Act for granting compensation for general damages. If the claim is one u/s 166 of the Act, then the Tribunal having regard to the facts and circumstances of the case can grant reasonable compensation for the aforesaid general damages. In the instant case, the Tribunal has granted Rs. 15,000/- for loss of estate. Here, it has to be seen that as per claimants, the deceased was their only son. Besides, they have a minor unmarried daughter. Therefore, in their old age, the deceased, if alive, has to

 

maintain them and also perform the marriage of his sister. However fate decided otherwise. Therefore, loss to the estate of claimants is more since they have no other son to look after them in their old age. Therefore, considering these facts and circumstances, an amount of Rs. 25,000/- is granted towards loss of estate.

8. Then the Tribunal granted Rs. 5,000/- towards funeral and transportation expenses. This amount also can be said to be inadequate in the light of the judgment of Hon''ble Apex Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, (Supreme Court), wherein it was held that Rs. 25,000/- is the reasonable amount towards funeral expenses. Hence, the said amount is awarded for funeral and transportation expenses.

9. In the result, this M.A.C.M.A. is partly allowed and the Respondent No. 2/ Insurance Company is directed to pay to the appellants/claimants, the compensation for loss of estate at Rs. 25,000/- (instead of Rs. 15,000/- awarded by the Tribunal) and funeral and transportation expenses at Rs. 25,000/- (instead of Rs. 5,000/- awarded by the Tribunal) with proportionate costs and interest at 6% per annum from the date of O.P. till the date of realization, within one month from the date of this judgment failing which execution shall be taken out against them. No costs. Miscellaneous applications if any pending in this appeal, shall stand closed.