...RESPONDENT/RESPONDENT NO.2

Counsel for the Appellant: SRI SRINIVASA RAO VUTLA

Counsel for the Respondent(s):

Sri D. KODANDARAMI REDDY

Cases referred :

2023 ACJ 331
MACMA No.945 of 2013
(2009) 6 Supreme Court Cases 121
2017(16) SCC 680
(2011) 14 Supreme Court Cases 639
LAWS (APH)-2014-9-40
2019 SCC OnLine Bom
(2015) 4 SCC 237

The Court made the following:

JUDGMENT:-

Challenge in this M.A.C.M.A. is to the award, dated 16.03.2019 in M.V.OP.No.130 of 2017, on the file of Motor

Accidents Claims Tribunal-cum-V Additional District Judge, Rayachoty (for short "Tribunal"), whereunder the Tribunal dealing with a claim of compensation filed by the claimants seeking compensation of Rs.15,00,000/- on account of death of one Yerradoddi Lakshmi Devi (hereinafter will be referred to as "deceased) in a motor vehicle accident, which was occurred on 21.07.2017, awarded a sum of Rs.13,86,250/- towards compensation and apportioned the same in favour of the claimants.

2) The parties to this MACMA will hereinafter be referred to as described before the Tribunal for the sake of convenience.

3) The case of the claimants, in brief, in M.V.O.P.No.130 of 2017 is that on 21.07.2017 morning, the first claimant and his wife by name Y. Lakshmi Devi i.e., deceased left Rayachoty to go to their agricultural land by taking Tomato Naru on their Scooty bearing No.A.P.04-AU-4481. The first claimant was riding the Scooty slowly on the left side of the road and his wife was pillion rider. At about 9-00 a.m., they reached near the bus stop of Regadigunta Vandlapalli Village of Sambepalli Mandal on N.H.40. Then, the first respondent, who is the driver of Car bearing No.A.P.03-CC-0004 (hereinafter will be referred to as "offending vehicle"), drove the same in a rash and

negligent manner without blowing horn while proceeding towards Sambepalli side from Rayachoty side. He lost control over the offending vehicle due to speed and dashed against the front going Scooty on which the first claimant and his wife were moving. Then, they fell down on the road from the Scooty. They received serious injuries all over their bodies. The wife of the first claimant i.e., the pillion rider died on the spot. The accident occurred was due to rash and negligent driving of the driver of the offending vehicle. The police registered FIR in Crime No.207 of 2017 against the driver of the offending vehicle. The deceased was aged 49 years, hale and healthy and she was doing cultivation and a milk vendor. She was earning an amount of Rs.15,000/- per month and was contributing to her family. The claimants are the legal heirs and dependants on the deceased. The first respondent is the driver, the second respondent is the owner and the third respondent is the insurer of the offending vehicle. Hence, they are jointly and severally liable to pay the compensation.

4) The respondent Nos.1 and 2 remained *exparte.*

5) The third respondent got filed a counter opposing the claim and contended in substance that the claimants have to prove the age, income and earnings of the deceased and the manner of accident as alleged. The claimant Nos.2 and 4, the

daughters, are not legal heirs and dependants. Compensation claimed is excessive.

6) On the basis of the above pleadings, the Tribunal settled the following issues:

(1) Whether the accident occurred was due to rash and negligent driving of the driver of the Car bearing No.A.P.03-CC-0004, near Regadiguntapalli bus stop of Sambepalli village on NH-40 and that resulted in causing death of Yerradoddi Lakshmi Devi on 21.07.2017 at about 9-00 a.m.?

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

(3) To what relief?

7) On behalf of the claimants, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.7 were marked. On behalf of the respondents, no witnesses were examined and no documents were marked.

8) The Tribunal on considering the oral as well as documentary evidence answered the issues in favour of the claimants and against the respondents and awarded a sum of Rs.13,86,250/- as compensation and apportioned the same as Rs.7,00,000/- to the first claimant and Rs.2,28,750/- each to the claimants 2 to 4.

9) The unsuccessful insurance company/third respondent felling that the compensation so awarded is excessive and that it is not liable to pay the same, filed the present MACMA.

10) Now, in deciding the present MACMA, the point for consideration is that whether the award, dated 16.03.2019 in M.V.OP.No.130 of 2017, on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge, Rayachoty, is sustainable under law and facts and whether there are any grounds to interfere with the same?

Point:

11) Sri Srinivasa Rao Vutla, learned counsel appearing for the appellant, would contend that the rider of the Scooty i.e., the first claimant contributed 50% towards the accident and he was at fault in driving the Scooty without care and caution, as such, the Tribunal did not consider properly the contributory negligence made by the first claimant, as such, the compensation that was awarded is liable to be reduced. He would further submit that the Tribunal considered the income of the deceased at notional basis as that of Rs.9,000/- per month and reasonable amount should be Rs.5,000/-. With the above submissions, he would contend that the compensation is to be reduced accordingly.

12) Sri D. Kodandarami Reddy, learned counsel for the respondents/claimants, would contend that the deceased was possessing lands which are evident form Ex.A.6 1B register in her. She was self-employed by doing agricultural operations. Apart from that, she was housewife. The valuable services made by the deceased as housewife and further the valuable services made by her even in the supervisory capacity to do the agricultural operations would be more than Rs.9,000/- per month and the Tribunal did not consider the notional income properly. He would further submit that the notional theory arrived at by the Tribunal was on lesser side, as such, it needs to be enhanced. He would further submit that accordingly, the compensation is liable to be enhanced and in support of such contention, he would rely upon the decisions in **Sushma H.R. and another vs. Deepak Kumar Jha and others**[1] and further the Division Bench of this High Court in **Ms/ The National Insurance Company Limited, rep. by its Branch Manager vs. E. Suseelamma (MACMA No.945 of 2013)**. With the above submissions, he would contend that the compensation needs to be enhanced.

13) In the light of the above rival contentions advanced, firstly, this Court would like to deal with as to whether the

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accident occurred was due to rash and negligent driving made by the driver of the offending vehicle. As seen from the evidence of P.W.1, who was the first claimant, he got filed his chief examination affidavit putting forth the facts in tune with the pleadings. Through his examination, Ex.A.1 to Ex.A.7 were marked. Ex.A.1 was attested copy of FIR in Crime No.207 of 2017 of Sambepalli Police Station. Ex.A.2 was attested copy of inquest report of the deceased. Ex.A.3 was attested copy of *post mortem* report of the deceased. Ex.A.4 was attested copy of charge sheet. Ex.A.5 was attested copy of Motor Vehicle Inspector Report. Ex.A.6 was Mee-seva copy of 1B register, stands in the name of deceased. Ex.A.7 was Photostat copy of R.C., driving license and insurance policy.

14) It is to be noted that P.W.1 was no other a direct witness, who was riding the Scooty as a rider and the deceased was a pillion rider to attend agricultural operations. During cross examination of P.W.1, he denied the theory of the third respondent that he was negligent in riding the Scooty due to his negligence. In cross examination P.W.1 categorically testified that the Scooty bearing No.AP.04-AU-4481 belonged to him. He got driving license to ride the Scooty. He did not file the same. He denied that he does not possess valid driving license. He

denied that he rided the Scooty in a rash and negligent manner and caused the accident.

15) It is to be noted that it is the bounden duty of the insurance company to prove that P.W.1 had no valid driving license to ride the Scooty and he failed to prove the same. Apart from this, as evident from the record pertaining to the accident in question, police registered FIR in Crime No.207 of 2017 against the driver of the offending vehicle and after completion of investigation filed charges sheet under Ex.A.4. Ex.A.5-inquest report and Ex.A.3-post mortem report proves the death of deceased due to fatal injuries received in the accident. According to Ex.A.5, the accident occurred was not due to any mechanical defects in the offending vehicle. The insurance company espoused the cause of the driver of the offending vehicle by contending that the first claimant contributed 50% to the accident. Such contention is not at all tenable. The first respondent and the second respondent *remained* exparte. The evidence of P.W.1 coupled with Ex.A.1 to Ex.A.5 remained unrebutted. The second respondent did not enter into witness box to depose contra to the evidence adduced on behalf of the claimants. Having regard to the above, this Court is of the considered view that the contention of the learned counsel for

the appellant that the accident was occurred on account of the negligent riding made by P.W.1 is not at all tenable.

16) There is no dispute that respondent Nos.1 and 2 are no other than the driver and owner of the offending vehicle and they did not challenge the case of the claimants in anywhere. There is no dispute that the offending vehicle was insured with the third respondent, which is not at all in dispute. Hence, the respondent Nos.1 to 3 are jointly and severally liable to pay the compensation to the claimants, who are no other than the legal heirs and the dependants upon the deceased.

17) Now, turning to the quantum of compensation, according to the evidence of P.W.1 and P.W.2, the deceased was getting income of Rs.15,000/- per month. The Tribunal did not accept the contention of the claimants in this regard. The Tribunal looked into Ex.A.6-1B Namuna and held that the deceased was having landed property in her name.

18) As seen from Ex.A.6, pattadar was shown as Yerradoddi Lakshmi Devi i.e., the deceased. The land holdings are that the deceased possessed an extent of Ac.0-62 cents in Sy.No.897/2; an extent of Ac.1-00 cents in Sy.No.893; an extent of Ac.0-70 cents in Sy.No.892; an extent of Ac.0-10 cents in Sy.No.873/8 and an extent of Ac.1-03 cents in Sy.No.857. The deceased had dry lands total extent of Ac.3-45

cents. The Tribunal considered the age of the deceased as per *post mortem* report, inquest report and charge sheet is 49 years and following the decision of the Hon'ble Supreme Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another**[2]**,** applied the multiplier "13". The Tribunal having held that the claimants did not produce any documentary proof to show the income of the deceased, fixed the income of the deceased as Rs.300/- per day and arrived at the income as Rs.9,000/- per month and arrived at the annual income as Rs.1,08,000/-. The Tribunal considered the fact that as the deceased had agricultural holds and looking into the decision in **National Insurance Company Limited vs. Pranay Sethi and others**[3] was of the view that she was self-employed and looking into the age considered future prospects to an extent of 25%. The future prospects per annum is Rs.27,000/- out of 25% of Rs.1,08,000/-. The Tribunal after deducting 1/4th income of Rs.33,750/-, drawn out net drawings as Rs.1,01,250/- and multiplier with "13" and arrived at Rs.13,16,250/- and further awarded conventional heads of Rs.70,000/-. The Tribunal fixed the loss of earnings as Rs.13,16,250/- and conventional heads of Rs.70,000/-. Thus, the Tribunal arrived at total compensation of Rs.13,86,250/-.

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[2] (2009) 6 Supreme Court Cases 121
[3] 2017(16) SCC 680

19) Turning to the contention of the appellant counsel that the reasonable amount should be Rs.5,000/- per month it is nothing but without any basis. The deceased met with accident while she was going along with her husband to attend agricultural operations. She had an extent of Ac.3-45 cents of land in her name. Though the lands of the deceased are with the claimants family, but the Court can definitely considered the supervisory charges which one would have employed in the absence of the services of the deceased. Apart from this, the deceased was a housewife. The services of the housewife to her family members are also valuable and they have to be fixed looking into the role of the deceased which she was contributing towards her family members. In arriving at the income of the deceased as a housewife and further as supervisor to attend the agricultural operations, the sum arrived at by the Tribunal at Rs.300/- per day was quietly on reasonable basis. The period of accident was in the year 2017. In the year 2017 even the minimum wages which a person was supposed to get even by doing manual labour would be not less than Rs.250/- per day. Apart from this, the role of the deceased in doing agricultural operations with regard to the lands in her name i.e., in the supervisory capacity and further attending duties as a housewife cannot be underestimated. If those things are considered, the

income of the deceased that was fixed by the Tribunal as that of Rs.300/- per day in the year 2017 is quietly reasonable. Apart from this, as the deceased possessed lands in her name as evident from Ex.A.6 and she was a housewife, the Tribunal considered that it is a case of self-employed. The findings of the Tribunal in this regard cannot be found fault. The exercise made by the Tribunal to consider the future prospects at 25% is nothing but reasonable.

20) The contention of the claimants without there being any Cross Objections or Cross Appeal is that the Tribunal erred in considering the income of the deceased as Rs.9,000/- per month, as such, this Court has to enhance the compensation. It is very difficult to accept such a contention. The learned counsel for the claimants would rely upon the decision in *Sushama H.R.'s case (1 supra).* It has nothing to do to enhance the compensation in an appeal filed by the insurance company. As this Court already pointed out on factual appreciation exercise made by the Tribunal is reasonable. In M.A.C.M.A.No.495 of 2013, a Division Bench of this Court in the absence of an appeal in Cross Objections, enhanced the compensation in view of *Pranay Sethis's* case (3 supra) i.e., the conventional heads and also deducting towards personal expenses as 1/4th instead of 1/3rd.

21) It is to be noticed that the Hon'ble Supreme Court in **Ranjana Prakash and others vs. Divisional Manager and another**[4] quietly interpreted the scope of Order 41 Rule 33 of CPC.

22) The Hon'ble Supreme Court in *Ranjana Prakash's case (4 supra)* on 29.07.2011 in a Motor Vehicles Accident Claims Appeal filed on behalf of the claimants interpreted Order 41 Rule 33 of the Code of Civil Procedure. It is pertinent to refer here the factual matrix in the aforesaid case. The claimants who are the widow and two sons and mother of the deceased who died in a motor vehicles accident case laid a claim before the Tribunal to award compensation. The monthly salary of the deceased was Rs.23,134/-. The Tribunal awarded compensation of Rs.24,12,936/- with interest at 9% per annum. When an appeal was filed by the insurer, the High Court upheld the findings of the Tribunal with regard to the income and calculation of compensation, but held that the Tribunal ought to have deducted 30% of the annual income towards income tax. Accordingly, the High Court deducted 30% and reduced the compensation of Rs.16,89,055/-. The claimants canvassed the matter before the Hon'ble Supreme Court by way of a Special Leave. The Hon'ble Supreme Court noticed the fact that before

[4] (2011) 14 Supreme Court Cases 639

the High Court the insurance company contended that the annual income of the deceased was in taxable range, as such, the Tribunal ought to have deducted 30% of the income towards the income tax. The Hon'ble Supreme Court further found that the claimants contended before the High Court that the Tribunal did not consider the future prospects of 30% and that if the income had been increased by 30% by taking note of the future prospects and if 30% had been deducted towards income tax, that would virtually leave the income assessed by the Tribunal undisturbed. As against the aforesaid contentions, the High Court held that 30% of the annual income should be deducted towards income tax, but the High Court did not took cognizance of the contentions of the claimants that 30% should have been added to the income towards future prospects on the ground that the claimants did not challenge the award of the Tribunal on that ground. Therefore, the High Court ignored the error in the award of the Tribunal pointed out by the claimants, but only took note of the error pointed out by the insurer and reduced the compensation by 30%. The Hon'ble Supreme Court at para No.6 dealing with the aforesaid contentions held as follows:

> 6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of

> future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

23) The substance of the findings of the Hon'ble Supreme Court at para No.6 is that in an appeal filed by the owner/insurer seeking to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as

compensation. In such circumstances, the fact that the claimants did not independently challenge the award will not come in their way of a defending the compensation awarded. Thus, the substance of the aforesaid findings is also such that in an appeal filed by the insurance company seeking to reduce the compensation by pointing out any defect in the award, the claimants can seek to justify the award by pointing out other omissions, if any, in the award to contend that there is no need to reduce the compensation.

24) It is to be noted further that the Hon'ble Supreme Court at para Nos.7 and 8 interpreted Order 41 Rule 33 of the Code of Civil Procedure as follows:

> 7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can

> make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.
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> 8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

25) It is to be noted that though the powers under Order 41 Rule 33 of the CPC to be exercised by the Appellate Courts are wide enough so as to do justice to the parties, but such powers cannot be invoked to get a larger on higher reliefs. The Hon'ble Supreme Court made an illustration as to under what circumstances such powers can be exercised. The Hon'ble Supreme Court observed that where the claim is against the owner and the insurer of the vehicle and the Tribunal makes an

award only against the owner on an appeal filed by the owner challenging the quantum, the Appellate Courts can make the insurer jointly and severally liable to pay the compensation, along with the owner, though claimants had not challenged the non-grant of relief against the insurer. Thus, the ultimate principle of law evolved by the Hon'ble Supreme Court is very clear that in a motor accidents appeal if the compensation determined by the High Court is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/ insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation. This is the law laid down by the Hon'ble Supreme Court way back in the year 2011 in *Ranjana Prakash's case (4 supra)* directly dealing with MACMAs before the High Courts.

26) Following the law laid down by the Hon'ble Supreme Court as above, the composite High Court of Andhra Pradesh in

New India Assurance Co. Ltd., vs. Isaq[5], dealing with the contention of the claimants in a motor vehicles accident claim appeal filed by the insurance company declined to enhance the compensation. The composite High Court of Andhra Pradesh in the aforesaid decision followed the law laid down in *Ranjana Prakash's case (4 supra)*.

27) The Bombay High Court in **New India Assurance Company Ltd., Aurangabad through its Divisional Manager vs. Sunita and others**[6] also dealing with a situation as to whether in an insurance company appeal filed under Motor Vehicles Act before the High Court whether the High Court has power to enhance the compensation without there being any cross appeal or cross objections, declined to enhance the compensation by following the law laid down in *Ranjana Prakash's case (4 supra)*. Apart from this, the High Court of Bombay when the decision in **Jitendra Khimshankar Trivedi v. Kasam Daud Kumbhar**[7] was cited held that the Hon'ble Supreme Court exercised such power under Section 142 of the Constitution of India and further held that the Hon'ble Apex Court exercised jurisdiction under Article 142 of the Constitution of India which the High Court does not possess. To this extent, it

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[5] LAWS (APH)-2014-9-40
[6] 2019 SCC OnLine Bom 2
[7] (2015) 4 SCC 237

is very clear that the composite High Court of Andhra Pradesh and Bombay High Court followed the law laid down in *Ranjana Prakash's case (4 supra)*.

28) It is to be noted that the Delhi High Court in **MAC.APP.534 of 2017 & CM APPL.23164 of 2017** decided the said mater in **The Oriental Insurance Co. Ltd., vs. Sardar Singh & others** enhancing the compensation in an appeal filed under Motor Vehicles Act and against the aforesaid order, the insurance company filed an appeal in Special Leave Appeal No.14319 of 2020 raising the contention that the Delhi High Court enhanced the compensation contrary to the law laid down in *Ranjana Prakash's case (4 supra)* and it is pending now.

29) It is no doubt true that as evident in MACMA No.945 of 2013, the Division Bench of this High Court in an appeal filed by the insurance company enhanced the compensation in favour of the claimants without there being any cross appeal or objections. It is to be noted that the Hon'ble Supreme Court interpreted Order 41 Rule 33 of the Civil Procedure Code and categorically evolved a principle that in an appeal filed by the insurance company praying to reduce the compensation in the absence of any cross objections by the claimants, High Court has no power to enhance the compensation. The law laid down by the Hon'ble Supreme Court in the aforesaid decision is binding

on all the Courts under Article 141 of the Constitution of India. The decision of the Hon'ble Supreme Court as above is directly dealing with a Motor Accidents Claims Appeal before the High Court and by interpreting the powers of the High Court under Order 41 Rule 33 of the Civil Procedure Code. The Hon'ble Supreme Court interpreted the law with illustration also.

30) Hence, this Court has to follow the law laid down by the Hon'ble Supreme Court as above. In the present case the appellant/insurance company filed the appeal with one of the contentions to reduce the compensation. At best, the claimants can defend the quantum of compensation awarded by the Tribunal by pointing out other defects any in the award, if this Court proposes to reduce the compensation on any other ground.

31) Now, it is a case where the claimants sought to enhance the compensation on the ground that the Tribunal did not consider the income of the deceased in a proper manner. In the light of the law laid down by the Hon'ble Supreme Court as above, such a course of action is not at all permissible in the absence of Cross Objections or Cross Appeal. Apart from this, while analyzing the evidence on record, this Court arrived at a conclusion that the exercise made by the Tribunal to ascertain the income of the deceased as Rs.9,000/- per month is

apparently reasonable. Hence, this Court is not persuaded to accept the contention advanced on behalf of the respondents/ claimants to enhance the compensation.

32) In the result, MACMA is dismissed. There shall be no order as to costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt.18.04.2024.
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THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

M.A.C.M.A.No.81 of 2020

Date:18.03.2024

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