

**(2014) 07 AP CK 0052**

**Andhra Pradesh High Court**

**Case No:** M.A.C.M.A No. 516 of 2009

Bandameedi Suvarna

APPELLANT

Vs

A. Jairuddin

RESPONDENT

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**Date of Decision:** July 7, 2014

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

**Bench:** Single Bench

**Advocate:** P. Laxma Reddy, Advocate for the Appellant; E. Venu Gopal Reddy, Advocate for the Respondent

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### **Judgement**

U. Durga Prasad Rao, J.

1) This appeal is an offshoot of the award dated 24.08.2001 in OP No.344 of 1998 passed by the MACT-cum-Additional District and Sessions Judge, Medak at Sangareddy (for short the Tribunal), whereby the Tribunal, for the death of one B. Rajeshwar, awarded compensation of Rs.8,70,000/- and his disgruntled LRs. preferred the instant MACMA.

2) The facts in brief are thus:

a) The deceased was said to aged 36 years, a MBA Graduate and doing variety of businesses like commission agency, running oil and dal mill and real estate etc., besides holding the posts Director, District Cooperative Bank, Medak, Chairman, Eppepally Cooperative Society, President, Grain Merchants Association, Zaheerabad and President, Adarsha Vidyalaya Zaheerabad to name a few. While-so, on 19.07.1998 when the deceased along with his friends was going from Zaheerabad to Hyderabad in connection with his business in his car bearing No. AP 9 F 3700 and when they crossed Pothireddypally cross roads on N.H.No.9 at about 11-30 am, a lorry bearing No. KA 01 9104 came in the opposite direction being driven by its driver in a rash and negligent manner and dashed the car and thereby, the deceased who was driving the car sustained grievous injuries and died on the spot and other passengers suffered injuries. It was averred that the lorry driver was

solely responsible for the accident and due to sudden death of the deceased, his family became forlorned. The claimants who are the wife, minor son and daughter and parents of the deceased laid the claim in O.P.No.344 of 1998 against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.20,00,000/- as compensation under different heads.

b) Respondent No.1 remained ex parte.

c) Respondent No.2/Insurance Company denying the petition averments, mainly contended that the accident was occurred due to the fault of the deceased himself and not the lorry driver and further, the lorry driver had no valid and effective driving licence. Incidentally, R.2 denied the age, avocation and income of the deceased and urged to put the claimants in strict proof of the same. Finally, R.2 contended that the claim is highly excessive and arbitrary and liable for dismissal.

d) During trial, PWs.1 to 3 were examined and Exs.A.1 to A.19 were marked on behalf of claimants. Policy copy filed by R.2 was marked as Ex.B.1.

e) Award shows, issue No.1 is concerned, the Tribunal believing the evidence of PW.3K. Ravi Kumar, a passenger in the car and an eye witness to the accident coupled with Exs.A.1FIR and Ex.A.2charge sheet, has held that the lorry driver was responsible for the accident. Issue No.2 the compensation is concerned, the Tribunal awarded Rs.8,70,000/- as compensation under different heads as follows:

Loss of dependency	Rs. 8,40,000-00
Non-pecuniary damages	Rs. 15,000-00
Loss of consortium	Rs. 15,000-00
Total	Rs. 8,70,000-00

Dissatisfied with the quantum, the claimants preferred the instant appeal.

3) Heard arguments of Sri P. Laxma Reddy, learned counsel for appellants/claimants and Sri E. Venu Gopal Reddy, learned counsel for R.2/ Insurance Company. Appeal against R.1 was dismissed for default on 15.12.2008. However, in view of the fact that R.1 remained ex parte and suffered decree before the Tribunal, his absence will not have any effect in the appeal in the light of decision reported in Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others.

4 a) Challenging the award, learned counsel for appellants firstly argued that the Tribunal committed error in fixing the annual income of the deceased only at Rs.1,20,000/- despite claimants projecting cogent evidence in the form of his income tax returns and other record showing much higher income.

b) Secondly, he argued that while fixing the annual income at Rs.1,20,000/-, the Tribunal committed another blunder by deducting Rs.5,000/- towards LIC premium

on the premise that the family of deceased would get benefit i.e, policy amount from the Insurance Company. Learned counsel took a strong objection to this observation and argued that the probable LIC policy amount receivable by his family has nothing to do with his income since the policy amount is not a pecuniary advantage that accrued directly and solely out of the accidental death of deceased in a motor vehicle accident and hence same is not liable for deduction. On this point, he relied on the following decisions:

1) Mrs. Helen C.Rebello and others vs. Maharashtra State Road Transport Corporation and another.

2) State of A.P vs. K. Pushpalatha.

c) Thirdly, he argued that though the Tribunal was right in deducting 1/3rd from the gross income of the deceased towards his personal expenditure, however, in view of the dictum laid down by the Supreme Court in a subsequent decision reported in Sarla Verma vs. Delhi Transport Corporation, 1/4th only has to be deducted since the number of dependents of the deceased is 5.

d) Fourthly, he contended that as per Sarla Verma's case (4 supra), the correct multiplier for a person in the age group of deceased is 15 but not 14 as chosen by the Tribunal.

He thus prayed to revise the compensation considering his above submissions.

5 a) Per contra, opposing the appeal, learned counsel for R.2/ Insurance Company firstly argued that the Tribunal has rightly taken the annual income of the deceased as Rs.1,20,000/- by taking an average from the income tax returns produced by the claimants and hence there is no need to review the same.

b) In respect of other arguments raised by the appellants also he submitted that the findings of the Tribunal were right and hence there is no need to enhance the compensation.

c) Finally, he argued that in this case there was some delay in filing the appeal and hence if compensation is enhanced, interest on such enhanced amount may be ordered from the date of registration of main appeal only.

6) In the light of above rival arguments, the point for determination in this appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement?

7) Point: The first argument is concerned, as per claimants, the deceased was 36 years old and he was a MBA Graduate and doing different businesses viz., commission agency, oil and dal mill business and real estate business besides officiating as Director of District Cooperative Bank, Medak, Chairman of Eppepally Cooperative Society, President of Grain Merchants Association, Zaheerbad and

President of Adarsha Vidyalaya Zaheerabad and that he was earning not less than Rs.20,000/- p.m. Be that it may, in proof of his educational qualification and income, the claimants produced Exs.A.5, A.6 and A.8 to A.18. Ex.A.8 is the SSC marks certificate showing his date of birth as 09.09.1962, whereas Ex.A.9 is his MBA certificate. So regarding his educational qualification, there is no demur.

a) Then coming to his income, Ex.A.5 is the order passed by the I.T.O on returns filed by the deceased for the Assessment year 1997-98 (financial year 1996-97) whereby excess tax paid was refunded. The total income shown by the deceased was Rs.1,14,590/-. Then Ex.A.6 is the I.T returns for the financial year 1997-98 (Assessment year 1998-99) showing his income as Rs.1,10,000/-. Ex.A.10 is the certificate issued by Secretary, PACS, Eppepally stating that the deceased officiated as President of PACS, Eppepally and Director of DCC Bank, Medak during 1995-98. Ex.A.11 is the certificate issued by General Secretary, Grain and Seeds Merchants Association, Zaheerabad stating that the deceased served as President from 1995-98. Ex.A.12 is another certificate issued by Secretary, Adarsha Vidyalaya stating that the deceased served as President during 1995-98. Ex.A.13 is an agreement of sale under which the deceased and some others purported to have purchased agricultural land. Whereas Exs.A.14 to A.16 relate to the assessment orders and self-assessment made by the deceased for the assessment year 1996-97. As per Ex.A.16, his total income was assessed at Rs.1,26,990/-. Ex.A.17 is the extract of accounts of Venkatesh Industries, Zaheerabad. As rightly observed by the Tribunal, it does not show the interest of the deceased in that concern. Ex.A.18 is the challan for the deposit of income tax for the assessment year 1997-98.

b) When the above record is perused, Exs.A.10 to A.12 would only show the social status of the deceased but not the income and hence they are not useful. When the I.T returns and orders covered by other exhibits are perused, as rightly observed by the Tribunal, they would not exceed the average income of Rs.1,20,000/- and so the Tribunal was right in fixing his annual income as Rs.1,20,000/- for the relevant period.

8) The second argument of the appellants is that the Tribunal erred in deducting Rs.5,000/- towards LIC premium. I find force in this argument. As rightly argued, payment of LIC premium and subsequent receiving of LIC policy amount due to death of deceased have nothing to do with the accidental death of the deceased in a motor vehicle accident. Hence the policy amount cannot be said to be a pecuniary advantage received only on account of the accidental death of the deceased. This point was clearly laid down by Hon"ble Apex Court in Helen C. Rebellos case (2 supra). In that case Apex Court was dealing with the question as to Whether the life insurance money of the deceased is to be deducted from the claimants' compensation receivable under the Motor Vehicles Act, 1939?

Answering the above question, the Apex Court held that the LIC policy amount was not a pecuniary advantage, liable for deduction. It observed thus:

The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.

In K. Pushpalathas case (3 supra) also, this High Court expressed a similar view in respect of the contributions made by a deceased employee towards P.F, group insurance and like.

a) Since the amount of Rs.5,000/- is not liable for deduction, compensation has to be reassessed. The net annual income of the deceased comes to Rs.1,05,000/- (Rs.1,20,000/- minus Rs.15,000/- towards income tax). Then multiplier is concerned, it is true that in Sarla Verma's case (4 supra), 15 is provided for the persons in the age group of the deceased, whereas the Tribunal selected multiplier 14. Since the difference being only one digit, multiplier 14 is accepted. Then deduction towards personal expenditure is concerned, the Tribunal deducted 1/3rd. However, in Sarla Verma's case (4 supra), Apex Court laid down that 1/4th has to be deducted when number of dependent family members is 4 to 6. In the instant case, dependants being 5 in number, 1/4th is to be deducted. So the compensation for loss of dependency comes to Rs.11,02,500/- (Rs.1,05,000/- x 14 x 3/4th). Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency	Rs. 11,02,500-00
Non-pecuniary damages	Rs. 15,000-00
Loss of consortium	Rs. 15,000-00
Total	Rs. 11,32,500-00

So, the compensation is enhanced by Rs.2,62,500/- (Rs.11,32,500/- minus Rs.8,70,000/-).

9) In the result, this appeal is partly allowed and ordered as follows:

a) The compensation is enhanced by Rs.2,62,500/- with proportionate costs.

b) The enhanced compensation amount shall carry interest at 6% p.a from 26.02.2009 (i.e, when the delay in filing the appeal was condoned as per orders in CMA MP No.1249 of 2003) till the date of realization.

c) The respondents are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.

d) No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.