
(1994) 04 AP CK 0009
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1473 of 1985

A. Prabhavathi and Others	Vs	APPELLANT
P. Samabasiva Rao and Others		RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:

Citation : (1995) ACJ 999

Hon'ble Judges : S. Dasaradha Rama Reddy, J

Bench : Single Bench

Advocate : B.V. Subbaiah, for the Appellant; S.V. Sundarajan, for the Respondent

Judgement

S. Dasaradha Rama Reddy, J.—On 26.6.1984, one Atluri Jayapal, when he was going on cycle, was knocked down by lorry bearing No. AAK 5959, owned by the first respondent and insured with the second respondent, on Grand Trunk Road at Martur. He was admitted in Government General Hospital at Guntur where he succumbed to the injuries on 28.6.1984. He left behind his widow, four sons aged 10, 7, 5 and 2 years and his parents-father aged about 70 years and mother aged 50 years. The widow and the four minor sons filed claim petition O.P. No. 192 of 1984 before the Motor Accidents Claims Tribunal alleging rash and negligent driving by the driver of the lorry claiming Rs. 75,500/- later restricted to Rs. 75,000/- as follows:

Loss of future earnings Rs. 50,000/- Loss of amenities Rs. 5,000/- Pain and suffering Rs. 5,000/- Loss of consortium Rs. 10,000/- General damages Rs. 5,000/- Damages to cycle Rs. 500/-

They also claimed interest at the rate of 12 per cent per annum from the date of filing of the petition to the date of realisation.

2. The parents who, according to the evidence, were living separately in Martur village with their other sons, filed a separate O.P. No. 221 of 1984 claiming Rs. 15,000/- towards compensation. The owner opposed the petition claiming that the accident occurred due to the negligence of the deceased who lost control of

the cycle and hit himself against the lorry. The owner and the insurance company disputed the quantum of compensation claimed. However, during trial, the owner remained ex parte. Thus, two O.Ps. were heard together by the Tribunal and were disposed of by a common order. The Tribunal found that the accident occurred on account of rash and negligent driving of the vehicle by its driver and awarded compensation of Rs. 21,000/- towards loss of future earnings and Rs. 4,000/- towards loss of consortium totalling Rs. 25,000/- together with interest at 6 per cent per annum from the date of filing of petition. The Tribunal, however, did not award any amount towards loss of amenities and pain and suffering. The award was given jointly and severally against owner and insurance company and apportioned into Rs. 10,000 to wife, Rs. 3,000/- each to four minor sons and Rs. 1,500/- each to father and mother. Against this order, the widow and the four minor sons have preferred this appeal. Neither the owner nor the insurance company has preferred any appeal against the order of the Tribunal. The parents also have not preferred any appeal.

3. As the finding of the Tribunal that the accident took place on account of rash and negligent driving by the driver of the lorry had become final, the appellants are entitled to compensation from the owner and the insurance company who are jointly and severally liable. As regards the quantum of compensation, towards loss of future earnings, the evidence of wife of the deceased, PW 1, is that the deceased was working as mason coolie earning Rs. 20/- per day. Tribunal held that the deceased would have been earning at least Rs. 200 to Rs. 300/- per month. Keeping in view that he was having four children and wife to maintain, I think it is reasonable to fix his monthly income at Rs. 500/-. Deducting Rs. 165/- equivalent to one-third of his monthly income towards appropriate expenses he would have incurred on himself, he would have provided Rs. 335/- to the wife and children had he remained alive. Thus, multiplicand can be fixed at Rs. 4,020/- (Rs. 335 x 12). Now coming to the multiplier to be applied, the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, held that taking multiplier corresponding to the age of the deceased at the time of death will be more reasonable and scientific method of assessing compensation instead of multiplying by the number of years the deceased would have probably lived and deducting some amount towards uncertainties of life. But various multipliers to be taken corresponding to a particular age are not indicated in the judgment. A Division Bench of this court in *Nirmala Narsava v. Vilas Ramachandra Shangda* 1989 ACJ 715 (AP), approved the judgment of a single Judge Jagannadha Rao, J. (as he then was) in *Bhagawandas v. Mohd. Arif* 1987 ACJ 1052 (AP), in prescribing actuarial Table for fixing various multipliers depending on the age, i.e., multiplier decreasing as the age increases. Accordingly, the multiplier to corresponding age of 40 years is 12.79. It may be observed that in the Supreme Court decision (supra) multiplier of 12 was adopted for the age of 39 years. But in that case, the court has doubled the salary as drawn by the deceased by the date of death while computing multiplicand on the ground that the post the deceased was holding

had promotional avenues. In the instant case, as there is no age of retirement for the deceased who was a mason coolie, keeping the monthly income at the same figure as he was earning on the date of death, the multiplier can be marginally enhanced as held by the Division Bench of this court in *Nirmala Narsava v. Vilas Ramachandra Shangda* (supra). Thus, the multiplier will be 13 which will be in accordance with both the decisions of the Supreme Court and the Division Bench of this court. Thus, the total loss of future earnings is fixed at Rs. 52,260/- (Rs. 4,020 x 13). Though the appellant has claimed in the petition Rs. 50,000/- towards loss of future earnings, larger amount may be given as it is well settled that the amounts claimed under each head can be increased in the appeal subject to the condition that the total amount awarded must not exceed the amount claimed in the petition.

4. Regarding general non-pecuniary damages, it is now well settled by the decision of this court in *Nirmala Narsava v. Vilas Ramachandra Shangda* 1989 ACJ 715 (AP), that even in the case of instantaneous death, the claimants are entitled to a minimum of Rs. 15,000/- towards the pain and suffering, loss of amenities of life and expectation of life, irrespective of status, age or income of the deceased. Thus, the appellants are entitled to Rs. 15,000/- under this head.

5. Regarding loss of consortium, the appellants have claimed Rs. 10,000/- and the Tribunal granted Rs. 4,000/-. Though the Supreme Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , stated that Rs. 15,000/- may be given towards loss of consortium, as the appellant has claimed only Rs. 10,000/-, I think it is reasonable to restrict it to Rs. 10,000.

6. Thus, the appellants are entitled to Rs. 77,260/- as follows:

Loss of future earnings Rs. 52,260/-

Pain and suffering, loss of amenities of life and expectation of life Rs. 15,000/-

Loss of consortium Rs. 10,000/-

But as the appellants have claimed only Rs. 75,000/-, the global award is restricted to Rs. 75,000/-.

7. Out of this compensation, Rs. 3,000 was already awarded to the parents of the deceased by the Tribunal. Even though the parents have not filed any appeal, I thought it would be reasonable to award some more amount to the parents in view of the enhancement in the quantum of compensation in this appeal. But, having regard to the fact that the wife has to maintain 4 sons and that the parents are living separately with other sons, I have come to conclusion that they need not be given any extra amount than what was already awarded to them.

8. Out of damages awarded for loss of estate, the mother as legal heir will be entitled to her share. In this case, the loss to the estate was computed at Rs.

15,000 and as the mother was already awarded Rs. 3,000/- to be shared with father (more than her legitimate share of Rs. 2,500/- (1/6th share) no further amount is awarded to her.

9. The appellants are entitled to interest at 12 per cent per annum from the date of filing of the petition. As the appellant No. 2 has become major during the pendency of appeal, the guardian is discharged.

10. The first appellant is entitled to an amount of Rs. 22,400/-, appellant Nos. 2 to 5 to Rs. 12,400/- each and the parents are entitled to Rs. 3,000/-. Thus, the appellants will be entitled to a total sum of Rs. 72,000/- as against Rs. 75,000/- claimed and Rs. 22,000/- awarded by the Claims Tribunal.

11. As per the guidelines reiterated by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the amounts payable to the appellant Nos. 3, 4 and 5 are directed to be deposited in any nationalised bank, as already directed by the Tribunal, in long term fixed deposits to cover the period till minors attain majority. The first appellant is not permitted to raise any loan on the fixed deposits. The monthly interest on the fixed deposits is payable to the first appellant to meet the maintenance expenses of the children.

12. The appeal is accordingly partly allowed with costs.