(1994) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : C.M.A. No. 1473 of 1985

A. Prabhavathi and Others — APPELLANT

Vs

P. Sambasiva Rao and Others — RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:
Motor Vehicles Act, 1939 — Section 110B

Citation : (1994) 2 ALT 349

Hon'ble Judges : S. Dasaradharama Reddy, J

Bench : Single Bench

Advocate : B.V. Subbaiah, T. Rajendra Prasad and M.S.T. Sai, for the Appellant; S.V. Sundara Rajan, for the Respondent

Judgement

S. Dasaradharama 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 50 years. The widow and the four minor sons filed claim petition O.P. No. 182 of 1989 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 of 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, taking the loss of future earnings, the evidence of P.W. 1, wife of the deceased, is that the deceased was working as mason coolie and earning Rs. 20/- per day. The Tribunal held that the deceased would have been earning atleast Rs. 200/- to 300/- per month. Keeping in view that he was having four minor children and wife to maintain, I think it is reasonable to fix his monthly income at Rs. 500/- per month. 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 (335 x 12). Now coming to the multiplier to be applied, the Supreme Court in Kerala Road Transport Corporation v. Sushma Thomas, 1994(1) ALT (SC) 1 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 uncertainities 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 and Ors. v. Vilas Ramachandra Shangda and Ors., 1989 ACJ 715 approved the judgment of single Judge (Justice Jagannadha Rao) in Bhagwandas Vs. Mohd. Arif, in prescribing Acturial 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 in 1 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 and Ors. v. Vilas Ramachandra Ahangda and Ors. 1989 ACJ 715. Thus, the multiplier will be 13 which will be in accordance with both the decisions of the Supreme Court in 1 supra and Division Bench of this Court in 2 supra. Thus, the total loss of future earning is fixed at Rs. 52,260 (4020 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 in each head can be increased in 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 and Ors. v. Vilas Ramachandra Ahangda and Ors. (2 supra) that even in the case of instantaneous death, the claimants are entitled to minimum of Rs. 15,000/- towards 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 Kerala Road Transport Corporation v. Sushma Thomas (1 supra) 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, in all the appellants are entitled to Rs. 77,260/- as follows:

Loss of future earnings Rs. 52,260/- Pain and suffering, loss 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 to 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 ofiRs.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 or 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, appellants 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 Tribunal.

11. As per the guidelines reiterated by the Supreme Court in Kerala Road Transport Corporation v. Sushma Thomas (1 supra) the amounts payable to the appellants 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 proportionate costs.

