
(1989) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 85 of 1986

Andhra Pradesh State Road Trans. Corpn.

APPELLANT

Vs

P. Raghavaiah and Others

RESPONDENT

Date of Decision : 13-02-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A, 92A(1), 92A(2), 92A(3)

Citation : (1989) ACJ 622

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : D. Reddappa Reddy, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

K. Ramaswamy, J.—The Appellant is the Andhra Pradesh State Road Transport Corpn. The Respondents are the husband, four major sons and two married daughters of the deceased Lakshmidevamma. The accident occurred on December 22, 1984 at about 9 a.m. near Musunuru village, Kavali taluk, Nellore district. Lakshmidevamma died due to the rash and negligent driving of the driver of the Corporation (RW 1) of the bus APZ 3605. The Respondents laid a claim in a total sum of Rs. 50,000/- . The Tribunal below awarded a sum of Rs. 32,000/- , Rs. 15,000/- towards no fault liability u/s 92-A of the Motor Vehicles Act, 1939 (for short "the Act"), Rs. 5,000/- towards loss of consortium and Rs. 5,000/- towards loss of dependency. It also granted a sum of Rs. 1,000/- to each of the Respondents for general damages. Assailing the legality thereof, this appeal has been filed.

2. The contention of Mr. Reddappa Reddy, the learned standing counsel for the Corporation, is that the Appellants could not have laid the claim both under Sections 110-A and 92-A of the Act and they can claim under either of the two sections; the Tribunal below has committed a grave error in awarding compensation under both the sections. It is also contended that Respondent Nos.

2 to 7 being major married sons and daughters living separately from the mother are not entitled to any amount towards general damages and therefore, there is a manifest error of law committed by the Tribunal.

3. Mr. M.V.S. Suresh Kumar, the Learned Counsel for the Respondents, contended that a reading of Section 92-A clearly postulates that there is a minimum statutory liability of Rs. 15,000/- and the claimants are entitled to lay the claim both under Sections 110-A and 92-A of the Act and the language in Section 92-A gives indication in that regard.

4. Therefore, the question is whether the claimants are entitled to lay the claim simultaneously both u/s 110-A and also u/s 92-A of the Act? It is undoubted that in a claim u/s 110-A, the claimant is entitled to compensation for the injuries of the victim or the death of the deceased at the behest of his or her legal representatives on diverse grounds enumerated therein and settled by various decisions of Supreme Court, this High Court and various other High Courts. There is no dispute in that regard. Section 92-A was introduced by Amendment Act 47 of 1982 with effect from October 1, 1982. It reads as follows:

92-A. Liability to pay compensation in certain cases on the principle of no fault.--

(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death, or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such default or permanent disablement.

Sub-section (1) postulates that where the death or permanent disability of any person has resulted from an accident arising out of the use of the motor vehicle, the owner shall be jointly and severally liable to pay compensation in respect of

such death or disability in accordance with the provisions of this section. Therefore, this is a general liability postulated under Sub-section (1) of Section 92-A. The amount of compensation liable to be paid under Sub-section (1) has been adumbrated in Sub-section (2) thereof, which posits that the compensation for the death of any person shall be a fixed sum of Rs. 15,000/- and for permanent disability, a sum of Rs. 7,500/- . In that case, the obligation to discharge the duty of the claimant to plead and establish that the death or permanent disability in respect of which the claim has been made under Sub-section (1) was due to any wrongful act or neglect or default of the owner or owners of the vehicle or vehicles has been dispensed with by introducing Sub-section (3) to Section 92-A. The reason is that in some cases it would be difficult to establish as to who is exactly at fault and in some cases, even without any fault, death or permanent disability may occur as a result of an accident. It does not mean that the liability under Sub-section (1) and Sub-section (2) of Section 92-A is in addition to the claim u/s 110-A; but it is in substitution thereof. Therefore, no claim can be made both under the above sections. It is true that in a case where money is claimed either u/s 92-A or Section 110-A, though there is a need to prove or establish negligence or rash driving and the amount claimed u/s 110-A is less than the statutory amount of compensation u/s 92-A, the claimant may be entitled to the statutory benefits u/s 92-A, viz, for the payment of minimum amount prescribed under Sub-section (2) of Section 92-A for death or permanent disability, as the case may be. But that does not mean that a claimant would be entitled to lay a claim both under Sections 110-A and 92-A. Therefore, the court below committed a grave error of law in awarding compensation under both those sections. The first claimant-husband is entitled to the statutory minimum amount of Rs. 15,000/- for the death of his wife Lakshmiddevamma.

5. As regards the children, since they are married and living away from the mother, they are not entitled to any compensation u/s 110-A. Hence the decree of the Tribunal granting Rs. 1,000/- to each of them is set aside.

6. The appeal is accordingly allowed in part. The first claimant is entitled to interest at 12 per cent per annum from the date of filing of the petition till the date of deposit. No costs.