
(2014) 02 AP CK 0114
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 530 of 2007

Andhra Pradesh State Road Transport Corporation	APPELLANT
Vs	
V. Sridevama	RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 163-A, 166

Citation : (2014) 02 AP CK 0114

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : W.V.S. Rajeswari, Advocate for the Appellant; K. Rathanga Pani Reddy, Advocate for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.—This Civil Miscellaneous Appeal is directed against the order dated 17.04.2006 passed in O.P. No. 610 of 2003 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal. The claimants, four in number, who are mother, wife and two children of the deceased-V. Bhaskar Reddy, preferred M.V.O.P. No. 610 of 2003 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge, Kurnool, u/s 163-A and 166 of Motor Vehicles Act, seeking compensation of Rs. 12,00,000/-. The Tribunal awarded compensation of Rs. 8,97,200/- with interest at 7.5% p.a. Feeling aggrieved of the same, A.P.S.R.T.C. filed the present appeal.

2. Learned Standing Counsel appearing for the A.P.S.R.T.C. contended that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal ought to have considered the fact that P.W.2, bike rider, was negligent in driving the motor cycle, the quantum of compensation awarded is also excessive, claim is unsustainable for want of impleadment of the owner and insurer of the bike, the earnings of the deceased to take at Rs. 6,900/- is without any basis, the multiplier adopted of 16 is also excessive and hence to reduce the quantum by arriving just compensation and by fixing prospective contributory negligence. Learned standing counsel for the appellant

drawn attention of the Court to Post Mortem Report and the cross-examination of P.W.2, who is a bike rider among other aspects with reference to the circumstances and facts to support the contention of contributory negligence.

3. Learned counsel appearing for the respondents contended that there is no contributory negligence in this case on the part of P.W.2 or deceased if the evidence read as a whole, that the Tribunal rightly came to the conclusion of the accident was resulted due to the rash and negligent driving of the driver of R.T.C. bus from which the pillion rider of motor cycle driven by P.W.2 died and the quantum awarded by the Tribunal is also just and it no way requires interference and sought for dismissal of the appeal.

4. Now the points that arise for consideration in this appeal are:

1. Whether there is contributory negligence on the part of P.W.2 and deceased the rider and pillion rider respectively of the motor cycle besides that of the bus driver?

2. Whether the claim to be taken u/s 163A and not u/s 166 of the Act from both provisions mentioned in the claim petition without exercising of option during enquiry and whether the quantum of compensation awarded by the Tribunal is excessive and requires interference by this Court while sitting in appeal; and

3. If so, to what extent?

POINT-1:

5. There is no dispute on the factum of the accident that was occurred invoking the motor cycle of P.W.2 while driving to which the deceased was pillion rider and the bus of the appellant-respondent to the claim petition while both the vehicles were coming in opposite direction on the fateful day while in motion at the place.

6. Now coming to the aspect of contributory negligence is concerned, Ex. A3 Post Mortem certificate clearly speaks the injuries sustained by the pillion rider only on left side and no injury on right side. It shows the pillion rider might have fallen to the left side, might be, from the hit or dashing of a bike as well as the bus while coming in contact in opposite direction or from bike rider sudden brakes applied, the pillion rider fallen from the bike to left side. It appears only therefrom, no injuries (muchless fatal) sustained by P.W.-2 bike rider. This is to say not purely from involvement of the bus but for dashing of both vehicles and/or the pillion rider lost grip while sitting or the bike swerved to the left, otherwise, all the injuries have not been caused to the left side.

7. Therefore, the contention of the respondent that when the evidence adduced by the claimants not rebutted by coming to the witness box by the vehicle driver of the opposite vehicle (bus), the contributory negligence cannot be found is untenable. It is the fundamental principle of law in appreciation of evidence that, it is not only from the facts but also from the circumstances with reference to the attending facts on over all consideration of the material on record. When such is

the case, if the material on record shows favour of opposite party, there is no need for opposite party to come to witness box and in such case, no adverse inference can be drawn. It is for the reason that, irrespective of who adduced what evidence, for the Court to appreciate entire material at large to rely. It is also the fundamental principle of law that burden of proof pales significance when both parties adduced evidence, so as to appreciate by Court entire evidence to arrive a just conclusion. What was observed in the decision relied in this regard by the appeal-respondents as claimants in *New India Assurance Company Limited Vs. S.V. Balakishna and Others*, was for non-examination of the opposite vehicle driver and from non-rebutting of the evidence adduced by the claimant showing negligence on the opposite driver with any contributory negligence, there is nothing wrong in accepting that evidence was the conclusion. It is fairly to say the conclusion arrived in the factual matrix of that case. What is contended of as if it is a principle in every case for opposite party come to witness box else to say his case is not taken as proved is not correct from the fundamental aspect in appreciation of evidence is not only from who adduced what evidence to appreciate but also from entire material on record. At the cost of repetition it is not only the evidence adduced by the parties, but also the attending circumstances to be considered is the criterion in deciding whether a fact is proved or not so also in regard to in particular factual matrix, the plea of contributory negligence raised is proved or not. Even coming to the other decision relied on *Rahena @ Rehana Banu and others Vs. G. Sai Kumar and another*, what was laid down in the factual matrix was in the evidence of the pillion rider of the Luna he deposed that the deceased (rider of Luna) ought not to have taken the risk when the lorry was coming in opposite direction does not mean he was guilty of contributory negligence. The Division bench in dealing with the factual matrix held that any version of a witness in the cross examination when outcome to wriggle out the truth by itself is not criterion. It is from the settled law that evidence is to be read as a whole of the witness and not by pick and chose of a sentence is the sum and substance of the expression. Thereby, when the circumstances clearly speak from what is discussed supra of the injuries of deceased on the left side and not on the right side and nothing to show at what portion of the bus the bike touched if any and what damage to the bike at front portion, it is outcome of contributory negligence. As the proportion of contributory negligence also depends on size of vehicle, manner of accident, condition of road, place of accident on road, place of damage to respective portions of vehicles and from the evidence available on record in arriving the conclusion, thereby there is 20% contributory negligence on the bike rider and 80% contributory negligence on the vehicle of the appellant (respondent to the claim petition).

8. Now, coming to the other aspect as to since the application is filed u/s 163-A and 166 of the Act and the pleadings disclose that the claim petition u/s 166 and the Tribunal also taken the matter u/s 166 of the Act even in consequential Section 163-A also mentioned in the factual matrix that is not fatal muchless to

say the claim is filed u/s 163-A to support the contention of the appellant-respondent to the claim petition i.e., A.P.S.R.T.C. In fact the decision relied on National Insurance Co. Ltd. Vs. J. Yellappa and Others, it was held that in the simultaneous petitions filed under two provisions to prosecute simultaneously not sustainable and option is available to the claim to opt one to proceed as both once a claim filed u/s 163-A of the Act, it is not an interim measure u/s 140 of the Act, a final order and again proceeding or simultaneously proceeding u/s 166 of the Act does not arise. Here though that proposition is not directly applicable, it clearly says where two petitions prosecuted simultaneously even as the first one is u/s 163-A of chapter XI and the second one is u/s 166 of chapter XII, the first one is taken as opted for not selecting the option. However, subsequently a division bench of this Court in Bhupathi Prameela and Others Vs. The Superintendent of Police and Others, observed that when it is the duty of the Court to do justice to the parties when technicalities coming in the way much importance need not be given because ultimately justice has to be done when two views are possible, the view in favour of the victim which relieve their distress and misery should be adopted in saying even the claim petition filed u/s 163-A and 166 of the Act, as Section 166 of the Act taken since beneficial that can be considered. Having regard to the same, the claim petition is treated u/s 166 of the Act.

9. Now, coming to the quantum of compensation, the Tribunal awarded is excessive as contended by the appellant concerned, the place of accident was near Bhimavaram village of Nandyala mandal of Kurnool District and the accident was dated 30.07.2003 at about 1.30 P.M. and in the F.I.R. (the avocation of the deceased v. Bhaskara Reddy was referred as site incharge) given by one I. Mohana Reddy of Sarvepally village of Nellore District referred that he was attending sub-contract works and the site incharges K. Sesha Reddy and v. Bhaskara Reddy while proceeding on the T.V.S. moped bearing No. AP 21 H 1255, the accident was occurred from involvement of the opposite coming A.P.S.R.T.C. bus near a turning to say the avocation of the deceased was as a site incharge in A.P.R. constructions Private Limited. Ex. A-6 is the salary certificate it was by A. Prabhakara Reddy & Company on a letter head as one Murali Krishna, G.P.A. holder placed reliance dated 19.07.2003 that V. Bhaskara Reddy of Kadivedi village worked as site incharge in their company and he was paid a consolidated salary of Rs. 6,900/- per month. In the letter head, there is no registration of the company even no other details but for address at Hyderabad and there are no particulars that how long he was working and there was no other proof he filed but for the G.P.A. holder who issued Ex. A-6 came to the witness box and deposed as P.W.-3 that he attended as per the Court summons to give evidence on behalf of the claimants and he is G.P.A. holder of A. Prabhakara Reddy and Company, Class-I contract workers and Ex. A-8 is the G.P.A. dated 13.06.1998 executed by said entity in his favour to look after the contract works and deceased was working as site incharge and he was paying consolidated salary of Rs. 6,900/- as mentioned in Ex. A-6 and they were taken debit vouchers on

payment of salaries of the employees and some of the debit vouchers of the deceased from December, 2002 to June, 2003 filed by him and marked as Ex. A-9 in the cross-examination he deposed that there is no registration certificate of the entity filed and there is no registered G.P.A. in his favour and there was no G.P.F. contribution for the employee, there was no gratuity paid to the employee after death to say he was working under them and there is no provide fund. There is no specification even concluded and denied the suggestion that Ex. A-6 prepared for the purpose of claim petition. Despite the said cross-examination of P.W.-3, there is no material relevant to establish the earnings of the deceased filed either by the claimants or by the so called employer. The accident was dated 30.07.2003. Even as per Lata Wadhwa and Others Vs. State of Bihar and Others, in the absence of proof of income, the minimum to be taken is Rs. 3,000/- per month. The F.I.R. speaks he was working as site incharge, if that is taken for the two persons rider and the pillion rider and not confined to the rider, P.W.-2 Sesha Reddy alone as per the F.I.R. a little ambiguity in this regard. If that is the case, he is an employee having fixed salary by earning Rs. 6,900/- cannot be taken from what is taken supra. As per the Apex Court expression Rajesh v. Rajbir Singh 2013 ACJ 1403 : (4) ALT-35 (SC). in the case of salaried employees are those with fixed earnings, the proportionate increase upto 40 years and upto 50 years 30% and upto 60 years it will be 15%. From the age of the deceased as per the post mortem examination report, Ex. A-3 about 40 years, there is no birth certificate filed muchless salary certificate reflects any date of birth or age to the claim of 38 years muchless in civil supplies card or voter identity card then that medical evidence is the basis. Those for a person above 40 years been 30% increase taken from the above expression and from the earnings as on the date of accident as per Latha Wadhwa (supra) with proportionate increase from the cost of living index price from 2000-01 to 2002-03 for about 2 years at 3,300 x 30% = 4,300/- per month. As far as contributory negligence concerned, 80% compensation has to be contributed by the appellant and 20% of it has to be contributed by the bike owner-cum-rider and deceased pillion rider together, it comes to Rs. 3,440/- per month. After deducting 1/4th towards personal expenses on the income, it comes to Rs. 2,580/- per month i.e. Rs. 30,960/- per annum. As per Sarla Verma v Delhi Transport Corporation 2009 ACJ 1298 the multiplier that is applicable for a person aged below 41 years is 15 and 41 to 45 is 14. Even multiplier 15 is taken, it comes to Rs. 4,64,400/-. Apart from it, the 2nd claimant-wife of the deceased entitled to Rs. 1,00,000/- towards the consortium from her age about 33 years as per the deposition from the deceased aged about 40 years, funereal expenses Rs. 25,000/-, for care and guidance to the two minor children Rs. 20,000/-, loss of estate (the minimum) Rs. 5,000/- vide Rajesh (supra), it comes to Rs. 6,14,400/- which is the just compensation to the claimants are entitled with interest at 7.5% p.a. Accordingly, point No. 1 is answered.

POINT-2:

10. In the result, the appeal is allowed by reducing the compensation from Rs.

8,97,200/- to Rs. 6,14,400/- with interest at 7.5% p.a. from the date of claim petition till the date of realisation and the respondent-A.P.S.R.T.C. shall deposit said amount within one month, failing which the claimants can execute and recover. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand.