(1996) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : C.M.A. No. 1137 of 1990

Ankinapalli Yanadamma and Others APPELLANT

Vs

G. Sreenivasulu Reddy and Another RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A, 110B, 95(2)

Citation : (1997) 1 ALT 259

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, for the Appellant; T. Lakshminarayana and A.V.K.S. Prasad, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—These six appeals sprout from the award and the decision of the Motor Accidents Claims Tribunal, Nellore in O.P. No. 327 of 1985 and the series, out of which the subject matters of the appeals are the O.P. Nos. 327, 328, 329, 425, 426 and 443 of 1985 respectively. The appellants are the claimants in the respective petitions filed u/s 110-A of the Motor Vehicles Act, 1939 (for short ''the Act''). The respondents in the appeals were the two respondents before the Tribunal. All the petitions arising out of the same motor vehicle accident were tried together by recording common evidence and disposed of by means of common judgment by the Tribunal. Similarly, these appeals involving common questions of law and facts have been heard together and are being disposed of by means of this common judgment.

2. The particulars of the respective claims are tabulated as herein:-

Sl. O.P. No. Appeal No. Appellants Claim Award Remarks No. (CMA) Rs. Rs. 1. 327/1985 1137/1990 Claimants/ 1,59,850/- 25,200/- Partly L.Rs. of the allowed deceased (death case) 2. 328/1985 1178/1990 -do- 1,59.850/- 30,120/- -do- 3. 329/1985 1182/1990 -do- 1,59,850/- 30,120/- -do- 4.

425/1985 1180/1990 Claimant 24,200/- - Dismissed (injury case) 5. 426/1985 1181/1990 Claimant 23,700/- - -do- 6. 443/1985 1179/1990 Claimant 27,700/- - -do- As the last column in the tabulation supra discloses, the claim petitions at Serial Nos. 1 to 3 were partly allowed and Serial Nos. 4 to 6 were dismissed. Aggrieved by that, the respective claimants have filed the appeals.

3. The admitted and common facts and controversies should initially record itself as the backdrop for considering the respective appeals. The petitions at Serial Nos. 1 to 3 in the tabulation are the death claim cases, whereas Serial Nos. 4 to 6 are the personal injury claim cases, the former having been filed by the legal heirs while the latter batch cases are of the injured persons. The 1st respondent is the owner of lorry No. AAN 8019 and the 2nd respondent is its insurer. While the three deceased persons viz., Ankinapalli Lakshmireddy, Ankinapalli Chinna Malakondareddy and Ankinapalli Obulreddy and the claimants and also other villagers were travelling in the lorry on 10-2-1985 at about 2 p.m. when the lorry was proceeding between Akbarbad and Sangam the lorry met with an accident while negotiating a curve since the driver of the lorry lost control over the vehicle and the lorry turned turtle, as a result of which three persons died and other claimants and certain persons were injured. It was alleged that the accident was due to the rash and negligent driving of the vehicle by the driver and after an enquiry it was found to be true. With such a finding, since the 1st respondent is the owner of the vehicle and 2nd respondent is the insurer of the same, the liability in regard to the extent of the compensation was jointly and severally fixed as against the respondents in the cases at Serial Nos. 1 to 3 (death cases), whereas in view of the existence of the defence of the respondents in regard to want of liability, the other claim petitions supra were dismissed. The results in the other claim petitions in the batch are not relevant in these appeals.

4. Mr. P. Sridhar Reddy, learned Advocate for the appellants, while challenging the awards in the appeals has raised the following three broad contentions viz., (1) The amount of compensation assessed in each of the cases is inadequate in view of the clear evidence before the Tribunal in that regard to award just and reasonable compensation in accordance with Section110-B of the Act, (2) In view of the admission and the proof that the lorry was being driven by a duly authorised driver holding the valid driving licence and in view of the finding that the accident occurred during the course of the employment of the driver under the 1st respondent, the owner of the vehicle, and in view of the vehicle involved in the accident having been insured with the 2nd respondent at the relevant time, the Tribunal unnecessarily entered into the controversy about the claimants in the injury cases supra being not covered by the insurance having travelled in the vehicle as fare paying passengers, and (3) Under the circumstances, the Tribunal was not justified in exonerating the respondents of the liability to pay the compensation under the awards and in dismissing the claim petitions at Serial Nos. 4 to 6 in the tabulation. Mr. A.V.K.S. Prasad, the learned Advocate for the 2nd respondent-insurer, has contended that when the injured persons-claimants travelled in the lorry as fare paying passengers without the express or

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implied authority by the owner to the driver and when there was breach of stipulation in the insurance policy Ex.B-1, the Tribunal was totally justified in dismissing the claim petitions supra as no liability can be fastened against the 1st respondent initially and against the 2nd respondent consequently to indemnify the 1st respondent in paying the compensation. No arguments were adduced on behalf of the 1st respondent when the matter was heard initially. However, at the time of dictation of the judgment in the Court, Mr. T. Laxminarayana, learned Advocate for the 1st respondent, submits that he is adopting the arguments of the learned Advocate for the 2nd respondent-Insurance Company.

5. The Tribunal has dealt with O.P. No. 327 of 1985 in Para 29 of the judgment. The age of the deceased is fixed at 60 years and a multiplier of 7 is adopted. The income of the deceased is fixed at Rs. 300/- and deducting Rs. 50/- towards his personal expenses Rs. 250/- per mensem or Rs. 3,000/-per annum has been taken into consideration as the contribution to the family and the loss of contribution and with such materials Rs. 21,000/- have been arrived at towards the loss of dependency to the claimants. To this Rs. 1,200/- are added towards the funeral and obsequies expenses and Rs. 3,000/- towards loss of consortium to claimant No. 1, the widow of the deceased and in all Rs. 25,200/- are awarded. The learned advocate for the appellants has contended that the loss of contribution so fixed by fixing the income at Rs. 300/- per mensem is against the evidence as the deceased was found to be a businessman and an agriculturist who was carrying sweet potatoes in the lorry which was not in dispute and when there was the testimony of the claimant No. 1, the widow of the deceased, that the income of the deceased was Rs. 1,500/- per mensem and even after deducting Rs. 500/- towards his personal expenses, Rs. 1,000/- ought to have been the loss of contribution to the family. The Tribunal was right in rejecting that evidence for want of supporting material. A person carrying on business getting income of Rs. 1,500/- per mensem ought to invest a suitable capital in the business and the margin of profit depends upon not only on the investment but also the manner and method in which the business is carried out. Such a person to do such a business to get such a margin of profit cannot do it without some piece of document as is normally expected. The absence of such materials was sufficient to reject the evidence of income. In the absence of that, the hypothetical or potential or probable income fixed by the Tribunal was justified but not quantum. Presuming that the deceased was in-charge of such a business either managing personally or through others or as a person putting personal labour like any other agriculturist as a labourer he could not have managed the business without getting at least Rs. 500/- to Rs. 600/- per mensem by way of profit. As is popularly said even an ordinary labour or a ''hamaly'' being hard labour should get Rs. 10/- to Rs. 20A per day and even it can be judicially noticed that the minimum wages of late have recognised to such an extent. Therefore, the income of the deceased could have been safely taken at Rs. 20/- per day or Rs. 600/- per mensem. Deducting 1/3rd towards his personal

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expenses, the loss of contribution to the family ought to have been Rs. 400/- per mensem or Rs. 4,800/- per annum. The Tribunal was justified in adopting the multiplier method and that is also concluded as per the latest settled law by the Supreme Court in more than one precedent commencing from General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, followed by several rulings including Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . Our High Court has also confirmed the multiplier method as the most scientific and proper method in A.P.S.R.T.C. Vs. B. Krishnaji Rao and another, . But for the accidents arising out of the 1939 Act (old Act), the multiplier should be 16 and for a person aged 60 years it should be 8 and not 7. So with the multiplicand of Rs. 4,800/- and multiplier of 8, the loss of dependency should be Rs. 38,400/-. To this Rs. 10,000/- towards loss of expectation of life having due regard to the facts of this case, Rs. 10,000/- towards the loss of consortium to claimant No. 1 being the widow, Rs. 3,000/- towards the incidental expenses to cover unaccountable and inexplicable items like transportation of the dead body, transportation of people for that purpose, obsequies and incidental expenses are added. That makes a total of Rs. 61,400/-. The Tribunal while awarding the break-up of the compensation as above is not within this scientific method of assessment. It may be emphasised that in a claim u/s 110-A of the Act it is the just compensation which is going to be awarded by the Court u/s 110-B of the Act. What is just compensation depends upon the facts and circumstances of each case. What is claimed by the claimants would be an initial proposal which may be examined and determined to test whether that would be just and reasonable. In that situation, the amount awarded by the Tribunal in this case is inadequate and should be stepped up to the quantum as above.

6. O.P. No. 328 of 1985 is dealt with by the Tribunal in Para 34 of the judgment. As per the findings of fact which are not assailed herein the age of the deceased was fixed at 45 years, his income was fixed at Rs. 300/- per month, the multiplicand was arrived at Rs. 2,880/- and thus by applying the multiplier method Rs. 25,920/- was fixed as loss of dependency or loss of contribution in regard to the claimants. To this an amount of Rs. 1,200/- were added towards funeral and obsequies expenses and Rs. 3,000/- towards the loss of consortium to claimant No. 1 and in all Rs. 30,120/- were awarded. The grievance of the learned advocate for the appellants in this case is regarding fixing Rs. 300/- per mensem as the income of the deceased and deduction of Rs. 50/- towards the personal expenses. The deceased in this case was similarly placed like the deceased in O.P. No. 327 of 1985. For the same reasons stated above, his hypothetical or the partial income could have been taken at Rs. 600/- per mensem and by deducting Rs. 200/- per mensem for personal expenses his contribution to the family were to be Rs. 400/- per mensem or Rs. 4,800/- per annum to represent proper multiplicand. For the age of 45 regarding the deceased, the multiplier ought to have been 11, and instead 9 is taken by the Tribunal. With such multiplier and multiplicand, the loss of dependency would be

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Rs. 52,800/-. To this Rs. 10,000/- towards the loss of expectation of life, Rs. 10,000/- towards loss of consortium to the claimant No. 1 and Rs. 3,000/- towards the incidental expenses as above are to be added. Thus the total would be Rs. 75,800/-. Thus the amount assessed in the award by the Tribunal is understandably low and deserves to be enhanced as above.

7. 0.P. No. 329 of 1985 finds a place in the judgment regarding consideration in para 36. The learned advocate for the appellants points out that this case is similar to O.P. No. 328 of 1985 in all respects including the age of the deceased. On verification from the facts and the discussion of the evidence in para 36 of the judgment, what the learned Advocate says appears to be correct. In this case also Rs. 300/- are taken towards the income of the deceased and Rs. 240/- are taken towards the loss of contribution and with the multiplicand of Rs. 2,880/- and the multiplier of 9, Rs. 25,920/- are arrived at and by adding Rs. 1,200/- towards funeral and obsequies expenses and Rs. 3,000/- towards the loss of consortium as above, the total amount awarded has been Rs. 30,120/-. For the same reasons as in the case of O.P. No. 328 of 1985, this case also deserves the escalation of the compensation to Rs. 75,800/-. That concludes the batch of death cases in the series.

8. Now we take up personal injury claim cases. O.P. No. 425 of 1985, the first of them, has been taken up for consideration in para 54 of the judgment. The claimant in this case testified as P.W.10 to the effect that as a result of the accident, two of his teeth in the upper row were partly broken and his lower lip was cut and he also sustained multiple injuries all over the body. He was treated as an in-patient in the Government Headquarters Hospital, Nellore for ten days and after discharge from the said Hospital, he underwent treatment at Kanigiri in a private nursing home of Dr. Ankireddy for about one month and spent Rs. 1,500/- towards the medical expenses under him. P.W.13 is the Doctor who examined him and treated him. Ex.A-11 is the injury certificate. P.W.13 testified regarding the injuries of the claimant with reference to Ex. A-I1. Although he stated that the claimant sustained eight simple injuries noted in Ex.A-11, the wound certificate itself discloses the following injuries:-

"1. An abrasion over left face and chin with a lacerated injury of about 1/2 " mucous membrane deep over left cheek bleeding,

2. Abrasion over nose bleeding,

3. Abrasion over the medial side of right elbow 1" diameter,

4. An abrasion 1" x 3/4" over the front of right knee,

5. An abrasion over lateral and upper part of right leg (red),

6. Two lacerated bone deep injuries of about 3/4" each over the back of left elbow with bleeding and abrasion over the lateral aspect of left elbow,

7. An abrasion with tenderness in the middle of back of waist, and

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8. An abrasion over lateral mallobus of right leg about diameter and a round abrasion 1/2" diameter over lateral aspect of right foot."

These injuries were certified to be simple in nature. Further, P.W.13 pointed out that the claimant was treated as an in-patient for twelve days and was discharged after 15 days or three weeks. However, he has concluded that there is no permanent disability. The Tribunal basing upon the income of the deceased at Rs. 15/- per day or Rs. 450/- per mensem awarded Rs. 3,000/- for pain and suffering and Rs. 650/- towards the loss of income and incidental expenses. The Tribunal has not applied its mind regarding the manner in which such minor injuries are to be considered for assessment of compensation. Even minor injuries in an accident cause shock, pain and anxiety to the patient and the persons interested in him. As has been medically found, it requires at least two or three weeks to completely heal up. Minor injuries are also to be classified in different ways as has been done by P.W.13 viz., laceration, abrasion, etc. and etc. The experience of the patient with such injuries during suffering and healing up depends upon the location of the injuries. That is why while awarding compensation for each such injury, the nature, the size, the location and the subjective experience of the patient become relevant. Just because a victim of the accident suffers simple injuries or minor injuries that cannot be taken lightly in awarding the compensation which should be just and not arbitrary. That is why comparable cases have awarded the compensation for such minor injuries like Rs. 500/- to Rs. 3,000/- per injury, and sometimes a global amount like Rs. 3,000/- to Rs. 5,000/-. Such comparable cases can be found in Bandaiah v. Ningappa 1985 ACJ 746 and Himachal Pradesh Transport Corporation''s case 1982 ACJ 308 (Himachal Pradesh H.C.) wherein in the former case Rs. 3,000/- were awarded for multiple abrasions while Rs. 5,000/- were awarded in the latter case. English cases have also awarded from ? 500 to ? 1500 for such injuries depending upon such circumstances (Pages 217 and 218 of the Book "Damages for personal injuries and death" of John Munkman of the Middle Temple and North Eastern Circuit, Barrister (1985), 7th Edition). Therefore, it can be safely concluded that for a simple among the minor injurie Rs. 500/- can be awarded, for a little aggravated minor injury Rs. 1,000/- can be awarded and this can extend upto Rs. 3,000/- per injury and as a whole for a bunch of simple among the minor injuries Rs. 3,000/-to Rs. 5,000/- can be awarded. However, these being only illustrations, decision in each case will depend upon the facts and circumstances of its own. Now with this background, the above injuries can be considered for assessing the compensation.

9. Injury 1 although an abrasion is on the face and the chin, which is a sensitive portion of the body. Injury 2 although an abrasion has been on the nose with bleeding. Injuries 3, 5, 7 and 8 are quite simple among the minor injuries. The size of injury 4 is quite big enough in addition to injury 6 being bone deep with a big size in addition to bleeding on a sensitive portion of the body viz., elbow which comes into contact with clothing, etc. while the employment of the hand will be consistently operated for so many purposes. With such multiplications, Rs.

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1,000/- each to injuries 1, 2 and 4, Rs. 2,000/ - for injury 6, Rs. 500/- each for injuries 3, 5, 7 and 8 have to be awarded and in all Rs. 7,000/- has to be awarded. Although no evidence is produced regarding the medical expenses, it cannot be taken that nothing has been spent for medical expenses as even for a scratch some sort of band aid or bandage may be necessary including tincture of iodine or any other home-made medicine till the injury is cured. Incidental expenses even to meet the Doctor and to be confirmed of no serious consequences some amount for transport and on the way expenses are to be incurred. Thus Rs. 500/- appears to be just sum and thus in all Rs. 7,500/- should be a just and reasonable sum in this case.

10. O.P. No. 426 of 1985 has been considered in para 56 of the judgment. Both from the testimony of the claimant and the Doctor P.W.13, the claimant has suffered six simple injuries on his person. Not even wound certificate is produced in support of it to know the location of such injuries or the gravity of it to award compensation individually as in the above case. The Tribunal has awarded Rs. 3,000/- for such injuries and Rs. 650/- to cover other expenses and even at the rate of Rs. 500/- per injury such amount appears to be totally justified and this Court finds no reason to reconsider it.

11. The last of the series is O.P. No. 443 of 1985 and that is considered in para 58 of the judgment. The Tribunal holding that the claimant suffered serious injuries awarded Rs. 15,000/- as non-pecuniary damages, Rs. 2,000/- towards loss of earnings and Rs. 500/- towards the medical expenses and in all Rs. 17,500/- were awarded. The methodology adopted by the Tribunal in doing so in spite of the clear evidence in the case appears to be not very satisfactory and requires reconsideration by this Court. In an injury claim case, as per the consistency in the settled law, the following items of compensation are to be considered and awarded:-

1. Shock, pain and loss of amenities of life;

2. Injury itself with or without permanent disability, whether temporary, partial or complete;

3. Medical and incidental expenses;

4. Loss of earnings till the date of the petition, during the pendency of the proceedings and the post-award;

5. Loss of earning capacity;

6. Loss of prospects of pleasures, desires and ambitions like loss of prospects of marriage, education, avocation, social, political and economic opportunities including the peaceful and comfortable portion of the remaining span of life having retired from the routine life;

7. Loss of property;

8. Any other loss due to the accident; and

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9. Any other item depending upon the facts and circumstances of each case.

The above items of compensation in a personal injury claim case are laid down in S. Muniyappa Vs. H.L. Narasimhaiah and Others, , S.A. Ghani v. Ponnen 1980 (2) Kar LJ 219 (Karnataka H.C.), Shivangowda v. Muthayya 1982 ACJ 224, Prabhavathi''s case 1981 ACJ 445, Basavaraj v. Shekhar 1987 ACJ 1022, M.S. Rayta v. Gowramma Chennabasappa ILR 1986 AP. 3211, and R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, .

12. The Tribunal has not actually examined the injuries suffered by the claimant to assess the compensation correctly and properly. In addition to the testimony of the claimant as P.W.12, the testimony of the Doctor P.W.13 and the wound certificate Ex.A-12 have brought out the actual injuries suffered by the claimant which are as follows:-

"1. A lacerated subcutaneous deep injury of about 1 1/2" x 1" over medial and lower end of left leg bleeding;

2. Immobility of right thigh fracture;

3. Deformity of left ankle present fracture;

4. An abrasion over dorsum of left thumb and fore-finger;

5. A depressed area over the left frontal area with a lacerated injury of about 1 1/2" x 1/2"bleeding;

6. Lacerated injury skin deep of about 1" x 1/1/2" and abrasion of skin over right frontal area;

7. A lacerated injury of about 3/4" over the bridge of the nose bleeding;

8. A lacerated injury of about 1/2" with abrasion over the lower part of right eye; and

9. Middle of upper lip lacerated 1/2" with bleeding."

X-rays confirmed the fracture of the right femur fracture of the neck and the fracture of the bones (Malleoli) of the left ankle. In addition to the certificate that such injuries are grievous in nature, P.W.13 has confirmed that the claimant was treated in the Hospital as an in-patient from the date of the accident till 14-2-1985 when he was discharged at his own request and against the medical advice and he has suffered the permanent disability in the movement of his left thigh to the extent of 50 per cent. He has further stated that the claimant cannot walk without the aid of staff or some other person and he cannot squat on the ground and he will also experience difficulty while answering the calls of nature. The duration of medical treatment in all cases of fracture would be minimum of four to six weeks, if not more. In this case, a major bone of the thigh was fractured in addition to that of the ankle. The immobilization of the right lower limb at two important junctions for four to six weeks would make it stiffen till physiotherapy treatment is given for about one or two months. In such a

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situation, the patient suffering such fractures during the accident will subject himself to the normal shock and pain and during the period of treatment the pain and discomfort and during the remaining period of life as stated with the disabilities the loss of basic amenities of life like walking, squatting and sleeping having been deprived of other basic pleasures, both marital and otherwise. Therefore, for shock, pain and loss of amenities of life Rs. 10,000/- deserves to be awarded in this case.

13. It has been reminded that the award should be consistent with the comparable cases over some length of time as has been said in Yograj v. Anthony Fernandez, 1980 (2) Kar. Law Journal 488. That is being adopted and applied by almost all the precedents. For the fracture of any bone of the leg, which is major in nature, Rs. 10,000/- to Rs. 15,000/- towards general damages are being awarded. In K.S. Subramani and Another Vs. A. Thomas Ross and Another, , Rs. 20,000/- were awarded towards the general damages. That was for an accident of pre-1990s. The ankle which is being treated as an integral part of the lower limb, the injury to the ankle or the bone therein is being considered as an injury to the leg as a whole for the purpose of awarding general damages. For a fracture of right tibia and fibula lower third near ankle joint, Rs. 20,000/- were awarded as general damages in M.P.S.R.T.C. v. Sudhakar 1977 ACJ 290. In addition to other injuries and the fractures including that of the ankle Rs. 1,00,000/- were awarded in Pepsu Road Transport Corporation v. Satinder 1984 ACj 316. For equinus deformity of the ankle, shortening of the leg, stiffness of knee and some stiffness of the hip, Rs. 44,800/- were awarded as global compensation in Ayub Yusufbhai''s case 1981 ACJ 167 . Where an injury to the ankle joint did not allow a student to run and stand for a long time, a global compensation of Rs. 73,500/- were awarded in Bhaskarbhai Khandubhai Desa Vs. Remanial Nathubhai Patel and Others, . Following such guidelines from such precedents, the claimant in this case ought to get Rs. 15,000/- for the fracture and the injury to the bones of the ankle joint leading to permanent disability.

14. Regarding the minor injuries, in the background of the principles enunciated above and in the particular case of the nature, Rs. 500/- for injury No. 4, Rs. 1,000/- for injury No. 5, Rs. 2,000/- for injury No. 6 and Rs. 1,000/- for injury No. 7, Rs. 1,000/- for injury No. 8 and Rs. 500/- for injury No. 9 and in all Rs. 6,000/- for minor injuries in this case are to be awarded. Thus for injuries and permanent disability Rs. 41,000/- are to be awarded by way of general damages. Although no positive evidence is produced regarding the medical expenses, taking judicial notice that such injuries for medical treatment cannot go without the normal expenses which are un-accountable or unsupportable by documentary evidence, Rs. 4,000 / - should be awarded to cover both medical and incidental expenses. For want of proper basis to fix the loss of income being not admitted either by the Tribunal or by the claimant himself either in the Tribunal or this Court, a fixed sum of Rs. 5,000/- can be awarded under this head and thus, the claimant in this case was entitled to recover a just compensation as hereunder:-

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1. Shock, pain and loss of amenities of life Rs. 10,000-00 2. Injuries and permanent disability Rs. 41,000-00 3. Medical and incidental expenses Rs. 4,000-00 4. Loss of income Rs. 5,000-00 _______________ Total Rs. 60,000-00 _______________ But the claim is restricted to Rs. 27,700/-. Mr. Reddy, learned advocate for the appellants submits that having noted the law that the Tribunal should award just and reasonable compensation to the claimant although the claim is less, the actual compensation as above may be awarded. In this regard he has depended upon a latest pronouncement of this Court in Botchina Tavitayya Vs. Adapalli Venkatapathi Raju and Others, .

15. It is true that while holding that the amount to be awarded under the claim u/s 110-B of the Act should be just and reasonable and although the claim is restricted the just compensation can be awarded, the question is not dealt with as to why and how it can be awarded. The true implications of law in that regard appear to have been exhaustively and fully dealt with in Municipal Corporation of Greater Bombay v. K. Gangaram 1987 ACj 311 and also in a latest pronouncement of this Court in Thulluri Ruthomma and Others Vs. S. Bala Kotaiah and Others, . Therein it has been held that although the claimant may be awarded the compensation more than what is claimed, it is for the claimant either to get the relief amended or for the Tribunal to consider it after giving an opportunity to both sides. There is a strong and supportable basis for such a view. In all judicial and quasi-judicial or anything having the quasi-judicial expression and the consequence, opportunity is the backbone of the rule of law which has a firm root in the principles of natural justice. Even in a claim petition, nothing can be decided without notice to the persons like owner, driver and the insurer and the basis of such a claim to accept or contest and only after an enquiry into such controversies, the Tribunal or the Court can decide the questions involved in a case, and particularly when it is a serious question of quantification of compensation, it cannot be done without notice to such persons involved in the litigation. If any such venture is done sporadically, in the considered opinion of this Court, that would be a negation of justice and defeat of natural justice which may lead to suspicion and unrepairable complications. Up till now, the claimant in this case has not chosen to file an application for amendment although the learned Advocate desired to take such a chance. This Court is unable to accede to such a momentary attempt. Even while amending the relief, the fundamental principles cannot be ignored like the merits, the conduct of the parties and the result by allowing the amendment upsetting the vested rights already accrued to the contesting parties. Therefore, in the absence of such circumstances, this Court is unable to award the amount exceeding what is claimed in the petition. In other words, the award in this case requires to be escalated to what is claimed at Rs. 27,700/-.

16. As already pointed out, O.P. Nos. 425, 426 and 443 of 1985 were dismissed by accepting the defence of the respondents viz., that the claimants were not the fare paying passengers in the vehicle. However, the contention of the 1st respondent that the claimants and others entered into the lorry by force has

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been rejected by the Tribunal, which is a finding of fact requiring no interference by this Court. Therefore, such a question is only to be considered with a defence whether the respondents can be saddled with the liability to pay the compensation in regard to the fare paying passengers or non-fare paying passengers. The Tribunal has found that the claimants were non-fare paying passengers. The question is dealt with by the Tribunal in para 55 of the judgment. The Tribunal has found that in the F.I.R. there was no such mention. However, the claimants testified that they paid Rs. 3/- each to the driver. It was also found that the liability of the Insurance Company was only to the extent of certain number of passengers or the persons accompanying the goods, if they travel in the cabin. The Tribunal has depended upon certain rulings in support of such a view. The Tribunal appears to be not justified in rejecting the testimony of the claimants about their paying certain fare to the driver in spite of the consistent testimony. The driver of the lorry did not report to the police regarding the accident by filing an F.I.R. or making a report to his master, the 1st respondent, about his carrying the passengers either by collecting the fare or otherwise or by their forcibly entering the lorry. From the totality of the circumstances, there was no reason to doubt that the claimants travelled in the lorry by paying some fare to the driver. In such a situation, the question is whether the respondents can be mulcted with the liability to satisfy the award in these cases. It is true that such a question was in conflict by various pronouncements including of our own High Court referred to in para 55 of the judgment. In view of the consistent authoritative pronouncements of the Supreme Court, the Apex Judicial body of the country, in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and others, and B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, such a question appears to be no longer a ''res integra''. Whenever the question of liability of the owner of the vehicle and the insurer is involved, the Court has to examine whether the accident occurred during the course of the employment of the driver with the employer, whether the vehicle had been insured with the Insurance Company and whether there was a breach of specific stipulation in the insurance policy by the owner of the vehicle, and such a breach should be wilful and not sporadic or too trivial. In B.V. Nagaraju''s case, it was emphatically held that the breach of carrying humans in a goods vehicle more than the number permitted in terms of insurance policy is not so fundamental a breach so as to afford to the insurer to eschew liability altogether. If we apply these decisions, the liability of the respondents to pay the compensation to the claimants in these cases cannot be avoided or absolved. Admittedly, the accident occurred during the course of the employment of the driver of the vehicle belonging to the 2nd (sic. 1st) respondent and the driver being the tort feasor and he being squarely liable to pay the compensation should be taken to have lodged the vicarious liability on the part of the 1st respondent, the owner of the vehicle. By virtue of the contract of insurance under Ex.B-1, copy of the insurance policy, the 2nd respondent insurer was liable to indemnify the 1st respondent in paying the compensation in these cases.

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Although such a defence is taken, there is no specific plea in the written statement about the breach of particular term of the policy by the 1st respondent carefully, and on the other hand, it is the finding of the Tribunal that the 1st respondent had not actually authorised the driver of the vehicle to carry the passengers more than what could be permitted. Moreover, even assuming that there was such a breach in general terms there was no plea or proof of wilful breach committed by the 1st respondent. The finding of the Tribunal appears as if the breach of the terms of policy was by the driver of the vehicle, which has nothing to do with the breach of the terms of the policy by the owner of the vehicle. Therefore, there was no justification for the Tribunal to dismiss these claim petitions on the ground that the respondents were not liable to pay the compensation for the reasons stated above. To conclude, the respondents were jointly and severally liable to pay the compensation without any limit as to the liability as the amount of compensation as determined is less than Rs. 1,50,000/-, which is the statutory limit of liability on the part of the 2nd respondent by virtue of Section 95(2), Sub-clause (a) of M.V. Act, 1939.

17. In the result, the appellants in C.M.As. 1137 of 1990,1178 of 1990,1182 of 1990,1180 of 1990,1181 of 1990 and 1179 of 1990 are entitled to recover Rs. 61,400/-, Rs. 75,800/-, Rs. 75,800/-, Rs. 7,500/-, Rs. 3,650/- and Rs. 27,700/- respectively from the respondents with joint and several liability together with interest at the rate of 12 per cent per annum from the date of petition till the date of payment. The consortium amount of Rs. 10,000/- each awarded to claimant No. 1-widow in all the death cases (C.M.A. Nos. 1137/90,1178/90 and 1182/90) are exclusively payable to them only. Out of the remaining amount of compensation awarded, claimant No. 1-widow in each of the death cases is entitled to 40 per cent of the same and the balance of 60 per cent shall be equally apportioned among the remaining claimants in all the death cases. If any amount is already paid or deposited that shall be given deduction. This shall be subject to depositing the amount in any Nationalised or Scheduled Bank in accordance with the directions of the Supreme Court in Susamma Thomas and Ors. v. G.M. Kerala State Road Transport Corporation, Trivandrum (1 supra).

18. The appeals are accordingly allowed with costs throughout.

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