

(1994) 04 AP CK 0021

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 848 of 1988

A.P.S.R.T.C.

APPELLANT

Vs

B. Krishnaji Rao and another

RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B

Citation : (1996) 1 ACC 277 : (1995) ACJ 983 : AIR 1995 AP 65 : (1994) 2 ALT 338

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

Bench : Single Bench

Advocate : Aga Reddy, S.C. for APSRTC, for the Appellant; K.V. Narasimha Murthy, K. Subrahmanyam and K. Ramachandra Raju, for the Respondent

Judgement

1. In a collision that took place on 15-7-1983 at 7.45 p.m., between the bus bearing No. APZ 8566 belonging to A.P.S.R.T.C. (for short "the RTC") and a car bearing No. AAC.8114, the driver of the car died instantaneously. He was aged 24 years, unmarried and left behind him his elder brother aged 30 years and elder widowed-sister aged 34 years. The brother and sister of the deceased claimed compensation of Rs. 1,00,000/- (Rs. 85,000/- towards loss of dependency, Rs. 10,000/- towards loss of expectation of life and Rs. 5,000/- towards mental agony, grief and suffering) alleging rash and negligent driving by the driver of the RTC. The RTC opposed the claim denying rash and negligent driving by its driver. The RTC also contested that the claimants being neither dependents nor the legal representatives of the deceased are not entitled to compensation. It has also challenged the amount claimed as excessive.

2. The Tribunal found that the accident occurred due to rash and negligent driving by the driver of the RTC bus and awarded Rs. 95,000/- towards loss of expectation of life, pain and suffering and loss of dependency. Against this, the RTC has preferred this appeal. Though many contentions are raised in the grounds of appeal, Mr. I. Aga Reddy, the learned Standing Counsel for RTC,

pressed only two contentions namely that the claimants are not entitled to claim any compensation and that in any event, as the dependants are elder than deceased, the Tribunal erred in fixing multiplier with reference to the age of the deceased.

3. The contention that the brother and sister of the deceased are not entitled to file the claim petition has no substance in view of decision of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, that u/s 110A of the Motor Vehicles Act, 1939, all the legal representatives are entitled to file claim petition before the Motor Accidents Tribunal. In this case, as the deceased died intestate, unmarried, leaving behind him . only his brother and sister, they being heirs are entitled to claim compensation. As regards loss to the estate, the legal representatives are entitled to compensation in accordance with the shares, they are entitled to under their Personal Law. But, so far as the loss of dependency is concerned, they will be entitled to compensation only if they are dependents and not otherwise. (Md. Abdul Wahab v. Setwin 1988 Ace CJ 743 (Andh Pra). In the instant case, the claimants deposed that the deceased was living together with them and was supporting them and their families. Hence, the respondents are entitled to claim compensation both as regards loss to the estate and loss of dependency.

4. As regards general non-pecuniary damages under the head of pain and suffering and loss of expectation of life and amenities of life, as held by Justice Jagannadha Rao, U. in Yerra Varalakshmi v. M. Nageswara Rao 1988 ACJ 354 (Andh Pra), which was affirmed by the Division Bench in Nirmala Narsava v. Vilas Ramachandra Shangde 1989 A CJ 715 : (AIR 1990 NOC 33)(Andh Pra), a minimum conventional sum of Rs. 7,500/-has to be given under each"head, irrespective of status, income or age of the deceased and even in the case of instantaneous death. This amount was awarded in the case of accident that took place in 1981. As the accident in the present case occurred in 1983, the respondent is entitled to Rs. 15,000/- under these heads.

5. Coming to the loss of future earnings, it has been recently held by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, that taking multiplier corresponding to the age of the deceased at the time of death will be 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 the 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 Shangde (AIR 1990 NOC 33) (supra) approved the judgment of single Judge (Justice Jagannatha Rao) in Bhagwandas Vs. Mohd. Arif, in prescribing Actuarial Table for fixing various multipliers depending on the age i.e., multiplier decreasing as the age increases. It is also well settled that while choosing multiplier, the age of the

deceased or the claimant whichever is higher has to be taken. In this case, the deceased was aged 24 years on the date of death while his elder brother who is first respondent was aged 36 years and his elder widowed sister, the second respondent, was aged 38 years, The learned counsel for the appellant Sri I. Aga Reddy, stated that the age of the first respondent was 40 years and his sister, the second respondent, was 42 years. Evidently, these are the ages at the time of deposition. But, what is relevant is the age on the date of death. The age on the date of trial is relevant only in case of injuries. Accordingly, 14,4 which is the multiplier corresponding to, 36 years has to be applied. But, as there is no retirement age for the deceased, who was a driver, it can be marginally enhanced to 15.

6. The deceased was getting monthly salary of Rs.500/- besides Rs. 10/- per day as batta. Taking on average that he goes out of station for 15 days in a month, he will get batta of Rs. 150/- per month. Adding it to the salary, the monthly emoluments will be Rs. 650/- and deducting the expenditure that the deceased would have spent on himself, which is normally 1/3rd, the net savings will be Rs.433/- per month. Thus, the multiplicand will be Rs. 5,196/-. Multiplied by 15, the loss of dependency will come to Rs. 77,940/-. Thus, the respondents are entitled to a total sum of Rs. 92,940/- which can be rounded off to Rs. 93,000/- including Rs. 15,000/- already received by them u/s 92A of the Motor Vehicles Act.

7. The Tribunal erred in deducting Rs. 1,000/- paid as ex gratia by the. RTC, I have held in C.M.A. No. 782 of 1990 dated 3-7-1993 and C.M.A. No. 1504 of 1988 just now pronounced that tort-feasor cannot claim benefit of deduction of amount paid voluntarily by either itself or by somebody. So, the respondents are entitled to Rs.93,000/- in addition to Rs. 1,000/- already received as ex gratia, together with interest at 12 per cent per annum as already granted by the Tribunal. The Tribunal took multiplier at 30 which is not correct and after computing the loss of dependency at Rs. 1,44,000/- fixed ultimately total compensation of Rs. 95,000/- towards general pecuniary and non-pecuniary damages. This is obviously not correct.

8. Thus, the appeal is allowed only to the extent of Rs. 1,000/-. As the respondents have substantially succeeded in the appeal, the appellant shall pay proportionate costs.

9. Order accordingly.