
(2006) 10 AP CK 0040
In the Andhra Pradesh High Court
Case No : CMA No. 1222 of 1999

APSRTC

APPELLANT

Vs

K. Andalu and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2007) 1 ALD 505

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.T.M. Prasad, SC, for the Appellant; Vijaya Kumar Gorje, for the Respondent

Judgement

L. Narasimha Reddy, J.—One Sri Swayam Prakash was employed as a Chainman in Hyderabad Urban Development Authority. On 11-6-1996, when he was proceeding to office along with one Mr. Ramachandra Raju on a motorcycle bearing No. AIX 4373, near ESI Hospital, Hyderabad, at about 2:45 p.m., a bus bearing No. AP 9Z 5672, owned by the appellant-Corporation, dashed against the motorcycle. Even while Swayam Prakash was being taken to Gandhi Hospital, Secunderabad for treatment, he died. Crime No. 283 of 1996 u/s 304A I.P.C. was registered against the driver of the Bus. The wife-first respondent, children-respondents 2 to 5 and mother-respondent No. 6 of the deceased filed O.P. No. 1052 of 1996 before the Motor Accident Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad, claiming a sum of Rs.4,00,000/- as compensation. The O.P. was opposed by the appellant, on several grounds. Through its order, dated 25-1-1999, the Tribunal awarded the claimed amount, together with interest at the rate of 12% per annum. The same is challenged in this civil miscellaneous appeal.

2. Sri V.T.M. Prasad, the learned Counsel for the appellant-Corporation submits that when the O.P. itself was filed u/s 166 of the Motor Vehicles Act, 1988 (for

short "the Act"), there was no justification for the Tribunal in applying the multiplier stipulated in Schedule-II to the Act, which becomes relevant, only when the O.P. is filed u/s 163A of the Act. He further contends that the Tribunal had taken the gross salary of the deceased as the basis, instead of taking the net salary. Learned Counsel submits that the rate of interest awarded by the Tribunal is excessive.

3. Sri Vijaya Kumar, the learned Counsel for the respondents, on the other hand, submits that the claim made by his clients fits into Sections 163A as well as 166 of the Act and the mere fact that they have proved the negligence of the driver of the Bus must not entail in reduction of the compensation. He further contends that the future prospects of the deceased were not taken into account and in that view of the matter, the Tribunal was justified in taking the gross salary as the basis.

4. The finding recorded by the Tribunal that the accident occurred, on account of the rash and negligent driving on the part of the driver of the Bus, is not seriously challenged. Having regard to the evidence of P.W.2, the eye-witness, the First Information Report-Ex.A. 1 and the charge-sheet-Ex.A.2, it can safely be held that the driver of the bus alone was responsible for the accident.

5. It is urged that the deceased was employed in the Hyderabad Urban Development Authority and his salary certificate was filed as Ex.A.7. According to that, the deceased was being paid the monthly salary of Rs.3,092/-. It is not clear as to whether the said amount represents the net, or gross salary. Even assuming that the net salary would be somewhat less than this, it must be noted that the future prospects of promotions and increments of the deceased must be taken into account, while determining the loss of dependency. The Tribunal did not address itself to this question. The probable increase in the emoluments, on account of promotions and increments, can be said to have been taken care of, by adopting the salary as it is, without any deductions, to become the net salary.

6. The Tribunal adopted the multiplier indicated in Schedule-II to the Act, on the basis of the age of the deceased at 38 years. The objection raised on behalf of the appellant-Corporation is that when the compensation is claimed u/s 166 of the Act, the multiplier contained in Schedule-II to the Act, which applies only to claims u/s 163A of the Act, cannot be adopted. Though there is some force in this plea, it can be accepted only subject to certain conditions.

7. Section 163A together with Schedule-II to the Act, provides for a structured formula. In a claim made under this provision, the claimants shall not be under obligation to prove the negligence on the part of the driver. However, it is restricted to such cases, where the annual income of the deceased or the injured does not exceed Rs.40,000/-. Even where the income is more, it has to be restricted to that amount.

8. There may be cases, where the facts pleaded and proved by the parties may fit into a claim u/s 163A read with Schedule-II to the Act as well as the one u/s

166 of the Act, to which the restrictions and ceiling as to annual income do not apply. In such cases, if the annual income of the deceased or the injured does not exceed Rs.40,000/-, there is no reason why Schedule-II to the Act cannot be applied. In fact, there does not exist any contradiction in terms.

9. In the instant case, the annual income of the deceased was arrived at Rs.37,104/- and after deduction of one-third towards personal expenditure, the annual contribution to the family was found to be at Rs.24,736/-. Both the figures are within the limits contained in Schedule-II to the Act. The mere fact that the respondents have proved the liability of the driver of the Bus for the accident, cannot disentitle them from availing the benefit under Schedule-II to the Act, in the matter of selection of multiplier. The necessity to apply the multiplier indicted in the judgment of this Court in Bhagwandas Vs. Mohd. Arif, , would arise, only when the annual income of the deceased or the injured exceeds Rs.40,000/- before deduction of one-third. The Tribunal has selected the multiplier and adopted all other figures, such as the one for loss of consortium, loss of estate, funeral expenses etc., from Schedule-II to the Act. This Court does not find any basis to interfere with the same.

10. So far as the rate of interest is concerned, the Supreme Court and this Court have uniformly awarded the same at 7.5%, in the claims of this nature, whereas the Tribunal awarded at 12%. Therefore, the same is required to be slashed down to 7.5%.

11. Hence, the civil miscellaneous appeal is allowed in part, reducing the rate of interest from 12% to 7.5%, but upholding the order passed by the Tribunal, in all other respects. There shall be no order as to costs.