(2001) 12 AP CK 0070

In the Andhra Pradesh High Court

Case No : AAO No. 1343 of 1998 and Cross-Objections

APSRTC, Mushirabad, Hyd. APPELLANT

Vs

Bassetty Nirmala and Others RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2002) 2 ALD 275

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : A.V. Sivaiah, for the Appellant; V. Sudhakar Reddy and V.L.N.G.K. Murthy, Amicus curiae, for the Respondent

Judgement

Motilal B. Naik, J.—This appeal and the cross-objections arise out of an award made in OP No. 74 of 1997 dated 10-4-1998 by the Motor Accidents Claims Tribunal-cum-District Judge, Nellore (for short ''the Tribunal''). Since the appeal and the cross-objections arise out of the same award made in OP No. 74 of 1997, they are being disposed of by the following common order.

2. Appellant in CMA No. 1343 of 1998 is the Andhra Pradesh State Road Transport Corporation has chosen to assail the award passed by the Tribunal in OP No. 74 of 1997 granting a total compensation of Rs. 7,14,560/- to the respondents/claimants with interest at 12% per annum from the date of the petition till the date of realisation. The respondents-claimants have also filed cross-objections in this appeal being dissatisfied with the compensation of Rs. 7,14,560/- granted by the Tribunal below as against their total claim of Rs. 10,08,000/-for the death of Bassetty Surendra Bhaskar on 2-8-1993 in a motor accident.

3. When the appeal and cross-objections are taken up for consideration, a preliminary objection is raised by Sri A. V, Sivaiah, Counsel representing the appellant-Corporation with regard to the maintainability of the cross-objections filed under Order 41, Rule 22 of CPC by the respondents- claimants in this appeal

contending that neither the provisions of the MV Act nor the rules framed thereunder contemplate filing of cross-objections by the claimants. Counsel further submitted that in view of the ratio laid down by a single Judge of this Court in Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, , following the view taken by the Madras High Court in Venkatarama Doss Pantulu v. Bheema Rao AIR 1934 Mad. 103(1), the award passed by the Tribunal is not a decree and as such cross-objections under Order 41, Rule 22 of CPC cannot be maintained.

4. On the contrary, Sri V. Sudhakar Reddy, learned Counsel appearing on behalf of the respondents-claimants submitted that the decision (supra) relied upon by the learned Counsel for the appellant has been overruled by a Division Bench of this Court in Srisailam Devasthanam, represented by Executive Officer, Srisailam v. Bhavani Prameelamma 1983 (2) APLJ 20, wherein it is held that cross-objections Order 41, Rule 22 of CPC are maintainable in the appeal filed in High Court. Learned Counsel also submitted while placing reliance on a decision of this Court in APSRTC, Mushirabad, Hyd. Vs. Patan Shamshad Begum and others, , that even though no appeal is filed seeking enhancement of the compensation by the claimants, in the said decision, the Division Bench of this Court held that by virtue of the provisions contemplated under Order 41, Rule 33 CPC this Court is empowered to enhance the compensation amount though the respondents-claimants have not filed any appeal seeking enhancement of the compensation awarded by the Tribunal in a case. Counsel, therefore, submitted that in view of the above legal position, the claimants/cross-objectors may be awarded the total compensation as claimed by them in the OP.

5. Be that as it may, the question with regard to the maintainability of cross-objections under Order 41, Rule 22 in an appeal filed against an award of the Motor Accidents Claims Tribunal is no longer res integra. A similar question fell for consideration before us in CMA No. 1726 of 1997 along with cross-objections, and on a detailed hearing of the learned senior Counsel on behalf of the respective parties and after considering various decisions including the decision (supra) and the Full Bench decisions of Allahabad and Karnataka High Courts in U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others, , and K. Chandrashekara Naik and Another Vs. Narayana and Another, , we held, by judgment dated 19-12-2001 that the ''award'' passed by the Motor Accidents Claims Tribunal is a ''decree'' and that the claimants are entitled to file cross-objections in the appeal, as provided under Order 41, Rule 22 CPC. We, therefore, reject the objection raised on behalf of the appellant-corporation in this regard.

6. We shall now proceed to decide the merits of the award made by the Tribunal below in the light of the contest made by the appellant and the respondents/ cross-objectors/claimants.

7. One Bassetty Surendra Bhaskar, aged 33 years, who was working as Deputy Executive Engineer, Housing Corporation, Cuddapah, boarded a Super Delux bus

bearing registration No.AP 9Z 5212 belonging to the appellant-corporation on 2-8-1993 at about 10 PM at Hyderabad to reach Cuddapah. While the said bus reached Beechpalli village in Mahaboobnagar District and was proceeding on the bridge over the river Krishna, the driver of the bus who drove the same in a rash and negligent manner lost control over the said bus and dashed against the side parapet wall of the bridge with high speed as a result, the bus fell down into the river Krishna at about 1-30 a.m. As a result of the said accident, Surendra Bhaskar and other passengers who were travelling in the said bus lost their lives.

8. The deceased Surendra Bhaskar was working as Deputy Executive Engineer, Housing Corporation, Cuddapah and was drawing a salary of Rs. 4,601/- per month which was later revised to Rs. 5,086/- per month. He was awarded a number of appreciation certificates by the Collectors of Nellore and Cuddapah and on such occasion, he got one increment. The deceased would have reached upto the level of Superintending Engineer at the time of his superannuation and would have got a substantial salary.

9. He was also earning Rs. 2,000/- by preparing designs for construction of houses. Claimant No. 1 is the wife of the deceased, claimants 2 and 3 are the minor children and claimants 4 and 5 are the parents of the deceased. The claimants, therefore, claimed a total compensation of Rs. 10,08,000/- for the death of Surendra Bhaskar from the appellant-corporation.

10. The appellant-corporation filed a counter denying all the material allegations. It is denied that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.AP 9Z 5212. A stand was taken by the corporation in its counter that the compensation sought is exorbitant and prayed for dismissal of the OP.

11. On the basis of the above pleadings, the Tribunal below framed the following issues, viz.,--

(1) Whether the petitioners are entitled to claim compensation from the respondent and if so, to what amount?

(2) To what relief?

In support of their claim, the respondents-claimants examined PWs.1 to 4 and marked Exs.A1 to A11. On behalf of the appellant-Corporation, its Depot Manager was examined as RW1 and no documents were marked. PW1 is the wife of the deceased. Ex.A5 is the salary certificate issued by the District Manager, A.P. State Housing Corporation, Cuddapah. Ex.A6 is the revised salary certificate of the deceased, Ex.A7, is the date of birth certificate of the deceased.

12. The Tribunal below on a consideration of the oral and documentary evidence, while taking the monthly salary of Rs. 5,086/- as per Ex.A6, deducted l/3rd amount from out of it towards personal expenses of the deceased and fixed an amount of Rs. 3,390/- per months towards contribution of the deceased towards maintenance of his family. As the age of the deceased was 33 years at the time

of his death, the Tribunal applied the multiplier 17 and estimated the loss of dependency to the tune of Rs. 6,91,560/- (3,390 x 12 x 17). The Tribunal also awarded an amount of Rs. 5,000/- towards loss of consortium for the claimant No. 1, Rs. 2,500/- towards loss of estate and Rs. 5,000/- towards transportation charges of the dead body and Rs. 500/- towards funeral expenses. Thus, in all, the Tribunal awarded an total amount of Rs. 7,14,560/- to the claimants with interest at 12% per annum from the date of filing of the OP till the date of realisation.

13. On behalf of the appellant-Corporation, Sri Sivaiah, learned Counsel submitted that the amount of Rs. 6,91,560/-granted by the Tribunal under the head ''loss of earnings'' is excessive inasmuch as when the salary certificate of the deceased under Ex.AS showed that "the deceased was drawing an amount of Rs. 4,061/- per month, the Tribunal should have deducted 1/3rd amount for the personal expenses of the deceased from the said amount only and ought not to have taken the amount shown under Ex.A6. Counsel further submitted that the Tribunal ought not to have applied the multiplier 17 in the facts of the case. Counsel submitted that in any event, the compensation granted by the Tribunal below is excessive and cannot be sustained.

14. On the contrary, Sri V. Sudhakar Reddy, Counsel appearing on behalf of the respondents-claimants cross-objectors submitted that though the claimants placed all the relevant documents including the revised salary certificate of the deceased under Ex.A6 in support of their claim of a total compensation of Rs. 10,08,000/-, the Tribunal has only granted an amount of Rs. 7,14,560/- which according to the learned Counsel is on a lower side. Counsel submitted, the deceased at the time of his death, was aged only 33 years and was working as Deputy Executive Engineer and he had bright future prospects and would have reached to the level of Superintending Engineer. Counsel contended, the Tribunal ought to have taken into account these factors and granted higher compensation. The learned senior Counsel placing reliance on a decision of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , submitted that as held by the Supreme Court in the above decision, the Tribunal ought to have taken into account the future promotional prospects of the deceased and ought to have granted higher compensation to the claimants. Learned Counsel also submitted that the claimants have incurred an amount of Rs. 10,000/- for transporting the dead body of the deceased from the place of the accident to their residence but the Tribunal has granted only Rs. 5,000/- and seeks an amount of Rs. 10,000/- towards transportation charges. That apart, according to the learned Counsel, the Tribunal has failed to award an amount of Rs. 15,000/- towards loss of consortium to the first claimant; and Rs. 15,000/- towards loss of estate to the claimants. Counsel, therefore, prayed for granting of the total compensation of Rs. 10,08,000/- to the claimants as claimed by them while allowing the cross-objections.

15. In the wake of the above submissions, the point that arises for our consideration is what is the quantum of compensation that could be awarded to the claimants/cross-objectors?

16. PW1 who is the wife of the deceased deposed in her evidence that her deceased husband was working as Deputy Executive Engineer, aged 33 years at the time of his death, getting a monthly salary of Rs. 4,601/- which was later revised to Rs. 5,086/-. She further deposed that the deceased was also earning an amount of Rs. 2,000/- also per from by undertaking extra work of preparing plans and designs for construction of houses. She also filed Exs.A5 and A6, salary certificates of the deceased. She also filed Ex.A7 which is the date of birth certificate of the deceased.

17. The fact that the deceased was aged 33 years at the time of his death is not seriously disputed by the appellant-corporation. The only dispute the appellant-corporation has raised in the appeal is about fixing of compensation on the basis of the revised salary certificate - Ex.A6. We do not think this objection raised on behalf of the appellant is sustainable inasmuch as when the employer of the deceased issued Ex.A6 which is the revised salary certificate, no reason is assigned on behalf of the appellant-corporation as to why the same cannot be accepted. No evidence is also placed on behalf of the corporation that the deceased was not drawing the amount as shown in Ex.A6 per month towards his salary at the time of his death. Therefore, we are inclined to hold, the Tribunal has rightly placed reliance on Ex.A6, and determined the monthly contribution of the deceased at Rs. 3,390/- towards the maintenance of his family after deducting 1/3rd amount from out of the monthly salary of Rs. 5,086/- towards the personal expenses of the deceased.

18. On behalf of the claimants it is contended that the deceased was aged 33 years at the time of his death and had bright future prospects had he been alive and would have earned more, in the light of the decision of the Supreme Court (supra), the Tribunal below ought to have awarded higher compensation. Admittedly, in this case, the deceased was 33 years at the time of his death and was working as Deputy Executive Engineer and had good service record as is evident from Exs. A8 to A11. Since the deceased was aged 33 years at the time of his death, as laid down in Bhagwandas Vs. Mohd. Arif, , the relevant multiplier could be 16, though for 30 years to 35 years, the multiplier varies from 16.51 to 14.81. Following the decision of the Supreme Court in Susamma Thomas''s case (supra), in CMA No. 2058 of 1992 we had an occasion to consider the question of granting higher compensation taking into account the future prospects of the deceased and by judgment dated 12-6-2001 we held that future prospects of the deceased has also to be considered as one of the criterion for awarding just and reasonable compensation. This is the consistent view taken by the Division Bench of this Court depending upon various factors in each case.

19. In this case, the deceased was aged 33 years at the time of his death, was working as Deputy Executive Engineer and had lot of service at his disposal and

had he survived, he would have secured promotions and had reached to the level of Superintending Engineer. However, as the life span is also governed by uncertainties, though the Tribunal has applied the relevant multiplier 17, taking into account the future promotional prospects of the deceased, we are of the view, one more point could be added to the multiplier 17, i.e., to apply the multiplier 18 for determining the compensation under loss of earnings. We, therefore, apply the multiplier 18 and estimate the total loss of earnings at Rs. 7,32,240/- (3,390 x 12 x 18).

20. Though the claimants claimed Rs. 10,000/- towards transportation charges, the Tribunal only granted Rs. 5,000/-. We, however, grant Rs. 10,000/- towards transportation charges. That apart, we also grant an amount of Rs. 15,000/- towards loss of consortium to the first claimant and also Rs. 15,000/- towards loss of estate, Though the Tribunal awarded Rs. 500/-towards funeral expenses, we hold that the claimants are not entitled for the said amount and we accordingly disallow that same. Thus, in all, the claimants are entitled for a total compensation of Rs. 7,72,000/- under the following heads, v/z.,--

(a) loss of earnings ..... Rs. 7,32,240/-

(b) loss of consortium to the first claimant.....Rs. 15,000/-

(c) loss of estate.....Rs. 15,000/-

(d) transportation charges.....Rs. 10,000/-

The Tribunal below has awarded interest at 12% per annum and we hold that the claimants are entitled to interest at 12% per annum on the above amount of compensation.

21. From the above compensation amount, the claimants 4 and 5 being the parents of the deceased, are awarded an amount of Rs. 50,000/- each towards their share along with accrued interest and they are entitled to withdraw the same since they are senior citizens. From out of the balance amount, the first claimant being the wife of the deceased is entitled for an amount of Rs. 15,000/- exclusively for loss of consortium. The remaining amount of compensation shall be divided equally by the claimants 1 to 3 along with the accrued interest. The first claimants shall be entitled to withdraw 50% of her share along with accrued interest and the remaining 50% of her share shall be kept in fixed deposit in any nationalised bank as per the wish of the first claimant, for a period of five years. The shares of claimants 2 and 3 who are minors shall also be kept in fixed deposit till they attain the age of majority in any Nationalised Bank as per their choice. The first claimant being the mother of claimants 2 and 3 is entitled to withdraw the accrued interest on the shares of claimants 2 and 3 periodically once in six months. In the event the first claimant requires any lump sum amount for the education or any other purpose of claimants 2 and 3, she shall be entitled to move the Tribunal for such withdrawal of the required amount. The award of the Motor Accidents Claims Tribunal-cum-District Judge, Nellore in OP

No. 74 of 1997 shall stand modified as indicated above.

22. In the result, CMA No. 1343 of 1998 is dismissed. The cross-objections filed by the respondents-claimants are partly allowed as indicated above.

