

(2014) 11 AP CK 0005
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1898 of 2005

B. Sreekanth Reddy

APPELLANT

Vs

G. Pratap Reddy and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 158, 163-A, 166

Citation : (2014) 11 AP CK 0005

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : P.S.P. Suresh Kumar, Advocates for the Appellant

Judgement

B. Chandra Kumar, J.—This appeal has been preferred by the claimant, aggrieved by the order dated 04.12.2004 passed by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, R.R. District at L.B. Nagar (for short "the Tribunal") in O.P. No. 1171 of 2000.

2. For the purpose of convenience, the parties will be referred to hereinafter as they are arrayed before the Tribunal.

3. Briefly, the facts of the case are as follows:

The claimant is none other than the husband of the deceased. On 19.08.1999, the claimant as driver of a mini lorry bearing registration No. AP 02V 317 was driving the said lorry towards Hyderabad after unloading guava fruits. When the lorry reached Injapur Tank Bund at about 10.00 p.m., all of a sudden some stray cattle ran across the road and, in order to avoid the accident, he applied sudden brakes and lost control over the lorry, as a result of which, the lorry dashed against a roadside tree and, in that process, his wife sustained injuries and died on the spot. His further case is that the deceased was engaged as a coolie for loading and unloading the guava fruits on the lorry and earning Rs. 2,500/- per month. It is also his case that the deceased was aged 22 years at the time of accident. He claimed a total compensation of Rs. 1,30,000/-.

4. The 1st respondent is the owner and the 2nd respondent is the insurer of the lorry. They filed counters denying the averments made in the claim petition with regard to the age and income of the deceased and also the manner of accident. They also denied that the deceased was engaged as a labourer for loading and unloading the guava fruits in the lorry.

5. On the basis of the above pleadings, the Tribunal framed the following issues for consideration:

1) Whether the claimant is entitled for any compensation and interest, if any, and if so to what amount and at what rate and for what period?

2) Whether R. 1 and R. 2 are liable to pay any part of monies covered by issue No. 1 supra?

3) To what relief?

6. The claimant examined himself as P.W. 1 and got marked Exs. A. 1 to A. 5 on his behalf. On behalf of the respondents, no oral evidence was adduced, but Exs. B. 1 and B. 2, copies of insurance policies, were marked.

7. The Tribunal, on appreciation of oral and documentary evidence, came to the conclusion that the accident occurred due to the negligence of the claimant himself, so he is not entitled for compensation and, accordingly, dismissed the claim petition. The same is questioned in this revision.

8. Now, the point that arises for consideration is, whether the finding of the Tribunal that the claimant himself was negligent, is based on proper appreciation of evidence.

9. Admittedly, except the evidence of the claimant as P.W. 1, there is no other oral evidence. The claimant categorically deposed that as some stray cattle ran across the road suddenly, he was forced to apply brakes and, in that process, the lorry hit a roadside tree. It is not in dispute that the lorry hit a roadside tree. The very fact that the lorry hit a roadside tree corroborates the version of the claimant. The claimant would not have applied sudden brakes, had he not seen the stray cattle across the road. When a driver with a good intention to save the life of a person or cattle applied sudden brakes, it cannot be said that he drove the vehicle rashly and negligently, since it was beyond his control. Therefore, it cannot be said that the claimant was negligent in driving the lorry at the time of accident.

10. Now, the issue is, when the accident did not occur due to negligent driving by the driver of the lorry, whether the claimant is entitled for compensation.

11. The Motor Vehicles Act, 1988 (for short "the Act") provides that a claimant can claim compensation not only under Section 166 of the Act, but also under Section 163-A of the Act. If a vehicle is involved in an accident that itself is sufficient to make a claim under Section 163-A of the Act. When a claim is made under Section 163-A of the Act, the claimant is not required to plead and prove

the negligence of the driver. Now, it is to be seen, whether an application filed under Section 166 of the Act can be treated as an application filed under Section 163-A of the Act.

12. Sub-section (4) of Section 166 of the Act enables the Tribunal to treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under the Act. Sub-section (6) of Section 158 of the Act reads as under:

"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

13. Under Sub-section 6 of Section 158 of the Act, a police officer shall forward a copy of the report with regard to an accident involving death or injury to any person. In view of the same, a report submitted by the police officer under Sub-section (4) of Section 166 of the Act has to be treated as an application for compensation. Thus, without referring any section, the claim for compensation can be considered. Therefore an application filed under Section 166 of the Act can be treated as an application filed under Section 163-A of the Act. It is the discretion of the Tribunal/Court to apply either 163-A or 166 of the Act depending upon the facts and circumstances of the case. Where in a case it appears that the claimants have failed to prove the rash and negligent driving by the driver of a vehicle, the application could be treated as an application filed under Section 163-A or under Section 140 of the Act and reasonable compensation can be awarded. In *Rajesh and Others Vs. Rajbir Singh and Others*, , the Apex Court considered this aspect and observed that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation. Thus, the claim need not be under any particular provision of the Act. Once the legal position is clear, the claimant's application can be treated as an application filed under Section 163-A of the Act.

14. According to the claimant, the deceased was a coolie and earning Rs. 2,500/- per month. Having regard to the facts and circumstances of the case, I am of the view that the income of the deceased can be taken at Rs. 2,500/- p.m. If the monthly income of the deceased is taken at Rs. 2,500/-, the annual income would come to Rs. 30,000/-. If 50% is deducted from the income of the deceased towards personal and living expenses, the contribution of the deceased to the family would come to Rs. 15,000/- per annum. As per the evidence of P.W. 1, the deceased was aged 20 years at the time of accident, so the appropriate

multiplier to be adopted is "16". By applying the same, the total loss of earnings would come to Rs. 2,40,000/- (Rs. 15,000/- x 16). Further, the claimant is entitled to Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. Thus, in all the claimant is entitled to Rs. 3,65,000/- (Rupees Three lakh sixty five thousand only).

15. Since the lorry involved in the accident is owned by the 1st respondent and insured with the 2nd respondent Insurance Company and the policy was in force at the time of accident, both the respondents and jointly and severally liable to pay the compensation.

16. At this stage, the learned counsel for the Insurance Company contends that the claimants have claimed only Rs. 1,30,000/- towards compensation and the compensation amount awarded shall not exceed the amount claimed by the claimants.

17. In view of the judgment of the Apex Court in Rajesh case (referred supra), there is no force in the contention of the learned counsel for the Insurance Company.

18. In the result, the appeal is allowed and the impugned order of the Tribunal is set aside. The claimant shall be entitled to a total compensation of Rs. 3,65,000/- (Rupees Three lakh sixty five thousand only) with interest at 7.5% p.a. from the date of petition till realization. The respondents are jointly and severally liable to pay the compensation amount and they are directed to deposit the compensation amount along with interest within three months. On such deposit, the claimant shall be entitled to withdraw the entire awarded amount together with accrued interest thereon. The deficit court fee can be paid at the time of drafting of a decree or the same can be deducted from the compensation amount after the respondents deposited the same. There shall be no order as to costs.

19. Consequently, miscellaneous petitions, if any, pending in the appeal shall stand closed.