
(2022) 03 TEL CK 0002

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 5191 Of 2008

Bhukya Vinoda And 2 Others

APPELLANT

Vs

B. Veeraswamy And Another

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2022) 03 TEL CK 0002

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : Ajay Kumar Madisetty

Final Decision : Allowed

Judgement

Challenging the award and decree, dated 17.11.2007, passed in O.P.No.333 of 2005 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I-Additional District Judge at Warangal (for short "the Tribunal"), the claimants filed the present appeal.

The facts, in issue, are as under:

The appellants/claimants, who are the wife and children of one Bhukya Somla (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.4,40,000/- for the death of the deceased in a motor accident that occurred on 10.12.2004. It is stated that on that day after completion of loading and unloading labour work on the Tractor-Trailer bearing No. AP 36 U 775 and 776, the 1st claimant and her deceased husband were returning home in the same tractor, when the said tractor reached at the outskirts of Gudur, the driver of the Tractor observed that another vehicle was coming in the opposite direction and when he tried to give a way to the said vehicle, in view of Road Dam, there was a jerk to the Tractor, as a result of which, the deceased was thrown out of the tractor on the road and the rear tyre of the vehicle ran over his head and that he died on the spot. Basing on the

complaint, a case in Crime No.132 of 2004 has been registered against the driver of the Tractor. Since the accident occurred due to the negligence of the driver of the 1st respondent, the claimants filed the claim petition against the respondents, who are the owner and insurer of the said Tractor-Trailer.

Before the Tribunal, the 1st respondent remained ex parte and the 2nd respondent/Insurance Company filed a counter denying the petition averments and contended that the deceased and others were traveling in a goods vehicle as un-authorized passengers and as such the Insurance Company is not liable to pay compensation to the claimants. It is also contended that the amount claimed is excessive, arbitrary and out of all proportions and prayed to dismiss the petition.

Basing on the above pleadings, the Tribunal has framed the following issues:-

1. Whether the accident took place on account of the rash and negligent driving of the Tractor and Trailer bearing No. AP 36 U 775 and 776 by its driver or due to negligence on part of the deceased himself?
2. What was the age and income of the deceased by the date of his death?
3. Whether the petitioners are entitled to receive any compensation? If so, to what amount and from whom?
4. To what relief?

On behalf of the claimants, P.Ws.1 and 2 were examined and got marked Exs.A1 to A8. On behalf of the respondent, R.W.1 was examined and got marked Ex.B1.

After considering the oral and documentary evidence on record, the Tribunal held that even though the accident occurred due to the rash and negligent driving of the driver of the Tractor-Trailer, the claimants would not be entitled to any compensation under the provisions of M.V. Act as well as the Workmen's Compensation Act since the deceased was a gratuitous passenger.

Challenging the same, the present appeal is filed.

Heard the learned Counsel for the appellants/claimants and learned Counsel for the 2nd respondent and perused the record.

The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the tractor-trailer.

It is pertinent to note that the Tribunal has observed that the deceased and P.Ws.1 and 2 were traveling in the tractor of the 1st respondent at the time of accident for execution of a road work taken up by a Contractor. The Tribunal further held that since the deceased was traveling in the tractor-trailer as an unauthorized passenger and that too the claimants failed to implead the Contractor as a party to the proceedings, they would not be entitled to any compensation under the provisions of the Motor Vehicles Act.

A perusal of the contents of the charge sheet, which was marked as Ex.A5, would show that on the date of accident, the deceased, along with his wife and others went to Bhupathipet Village on a Tractor bearing No.AP-36-U-775/776 in order to attend the labour work and after attending the labour work, they were returned to their village in the same Tractor and the driver of the Tractor drove it in a rash and negligent manner with high speed and when they reached the outskirts of Gudur Village, the driver of the tractor tried to escape the vehicle, which was coming in opposite direction, and dashed against the tree, as a result of which, the deceased, who sat on the trailer of the crime vehicle, fell down on the ground and the tractor was passed on the deceased, due to which the deceased died on the spot. It is clear from the contents of the charge sheet that on the date of accident the deceased was traveling in the Tractor by sitting on the Trailer. On one hand, the Tribunal gave a finding that the deceased would be a gratuitous passenger as he was traveling in the Tractor and on the other hand, the Tribunal held that the claim-petition is liable to be dismissed as the claimants have not impleaded the Contractor as a party to the proceedings.

While dealing with the case of gratuitous passenger in *National Insurance Co. Ltd. V. Saju P.Paul* (2013) 2 SCC 41, the Apex Court took note of entire previous case law on the subject mentioned and examined the question in the context of Section 147 of the M.V. Act. While allowing the appeal filed by the Insurance Company by reversing the judgment in *Saju P.Paul v. National Insurance Co. Ltd.* 2012 ACJ 1852 of the High Court, it was held on facts that since the victim was traveling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Apex Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

Recently, relying upon the said judgment the Apex Court in *Manuara Khatun and others v. Rajesh Kumar and others* (2017) 4 SCC 796, held that the direction to the Insurance Company, being the insurer of the offending vehicle, which was found involved in causing accident due to negligence of its driver needs to be issued directing them to first pay the awarded sum to the claimants and then recover the paid awarded sum from the owner of the offending vehicle in execution proceedings as per the law laid down in Para No.26 of *National Insurance Co. Ltd. V. Saju P.Paul* (1 supra).

It is not in dispute that the Tractor-Trailer was insured with the 2nd respondent-Insurance Company and Ex.R1-policy clearly indicates that the accident has occurred during the policy period. In view of the law laid down by the Apex Court in the judgments referred to above, the 2nd respondent-Insurance Company is liable to pay the compensation determined hereunder at the first instance and then recover the same from the 1st respondent-owner of the offending vehicle.

Insofar as the quantum of compensation is concerned, according to the claimants the deceased was aged about 38 years and was earning Rs.3,000/- per month as labourer. The claimants did not produce any document to show that the deceased was earning Rs.3,000/- per month. However, in *Latha Wadhwa vs. State of Bihar* (2001) 8 SCC 197, the Apex Court held that even there is no proof of income and earnings, it can be reasonably estimated minimum at Rs.3,000/- per month for any non-earning member. Therefore, this Court is inclined to take the income of the deceased as Rs.3,000/- per month. Apart from the same, the claimants are entitled to addition of 40% towards future prospects, as per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* 2017 ACJ 2700. Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-). After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased would be Rs.2,800/- per month and Rs.33,600/- per annum. As per Ex.A6-Post Mortem Report, the deceased was aged about 38 years, by the time of fatal accident and in view of the law laid down by the Apex Court in *Smt. Sarla Varma v. Delhi Transport Corporation* and another 2009 (6) SCC 121, the appropriate multiplier is '15'. Hence, applying multiplier '15', the total loss of dependency would be Rs.33,600/- x 15 = Rs.5,04,000/-. The claimants are also entitled to Rs.77,000/- towards conventional charges, as per *Pranay Sethi's case* (2009 (6) SCC 121 supra). Thus, in all the claimants are entitled to Rs.5,81,000/-.

At this stage, the learned Counsel for the 2nd respondent/ Insurance company submits that the claimants claimed only a sum of Rs.4,40,000/- as compensation and the quantum of compensation, which is now awarded would go beyond the claim made, which is impermissible under law.

In *Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited* and another (2011) 10 SCC 756, the Apex Court while referring to *Nagappa Vs. Gurudayal Singh* 2003 ACJ 12 (SC) held as under:

"It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in *Nagappa vs. Gurudayal Singh* (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above the claimants are entitled to get more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

In the result, the appeal is allowed and the appellants/claimants are entitled to compensation of Rs.5,81,000/- with interest @ 7.5% per annum from the date of petition till the date of realisation. Out of the said amount, the claimant No.1 is entitled to Rs.2,81,000/-, claimants 2 and 3 are entitled to Rs.1,50,000/- each.

After such deposit, the claimants are permitted to withdraw their respective shares. In view of the benevolence object of the Motor Vehicles Act, the 2nd respondent-Insurance Company is directed to pay the said compensation to the claimants at the first instance and then recover the same from the 1st respondent-owner of the offending vehicle by invoking the principle "pay and recover" as laid down by the Apex Court. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.