
(2002) 12 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1524 of 1998

Bontu Venkata Rao and Another

APPELLANT

Vs

Kalla Venkataramana and Another

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162

Citation : (2005) ACJ 77 : (2003) 3 ALD 314 : (2003) 2 ALT 572 : (2003) 1 AnWR 376

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : M. Lakshmana Sarma, for the Appellant;

Judgement

T. Ch. Surya Rao, J.—Unsuccessful respondents 1 and 2 are the appellants. The 1st respondent herein is the claimant and the 2nd respondent herein is the insurer. The 1st respondent filed the claim petition claiming compensation of Rs.1,00,000/- for the death of his wife in a motor accident alleged to have been caused by the 1st appellant by rash and negligent driving of the scooter belonging to the 2nd appellant. The case of the 1st respondent herein inter alia in the claim petition was that on 10-10-1991 at about 9.30 pm he and his deceased wife and their daughter were returning home by foot by walking on the extreme left of the road after having witnessed a picture and that when they reached near the police station Rampachodavaram, on account of the rash and negligent driving of the 1st appellant the scooter bearing No. AP 5A 8470 hit the deceased from behind as a result of which she fell down and sustained injuries and latter died in the hospital and that on account of the death of the deceased he suffered mentally and financially. It was his further case that the deceased used to earn Rs.1,000/- pm and that he being sick and his daughter being minor were completely dependant upon the deceased who was maintaining them. The 1st appellant filed counter resisting the claim, which was adopted by the 2nd appellant by filing a memo. He denied the allegation of driving the scooter at the relevant time in rash and negligent manner and asserted that he was not

responsible for the accident. The 2nd respondent herein - insurer resisted the claim on the premise that since the 1st appellant was not having a valid licence the insurer was not liable, for the breach of the condition in the policy. The tribunal framed three issues at the time of settlement of issues.

1) Whether Kalla Seetha died in an accident as a result of rash and negligent driving of the vehicle AP 5A 8470?

2) Whether petitioner is entitled for compensation and if so what is the amount?

3) To what relief?

2. At the time of trial four witnesses were examined including the claimant - P.W.1 and Exs.A1 to A6 were got marked on the side of the claimant. The 1st appellant examined himself as R.W.2. The 2nd respondent herein - insurer examined one witness and got Exs.B.1 to B.3 marked. Appreciating the evidence, both oral and documentary on the record, the learned tribunal was of the view that the accident had occurred on account of the rash and negligent driving of the scooter bearing No. AP 5A 8470. On issue No. 2 the tribunal held that since R.W.2 had no valid driving licence to drive the vehicle, the 2nd respondent - insurer was not liable and, therefore, on issue No. 3 the tribunal fixed the liability to pay the compensation on the 1st and 2nd appellants - the driver and the owner of the scooter respectively. Having been aggrieved by the said award the 1st and 2nd appellants, as aforesaid, have preferred the present appeal.

3. The learned counsel appearing for the appellants Sri M. Lakshmana Sarma contends that there has been no proof on record to fix the liability on the 1st appellant as driver of the vehicle and on the 2nd appellant as the owner of the vehicle that involved in the accident. Learned counsel further contends that the very basis upon which the compensation was assessed is not correct.

4. In view of the serious dispute as regards the identity of the vehicle that did in fact involve in the accident and the driver thereof at the appropriate time, the question that arises for determination in the first instance is whether the 1st appellant was the driver of the scooter at the appropriate time when the accident in this case was said to have occurred.

5. Obviously, the vehicle i.e., a Bajaj chetak scooter bearing No. AP 5A 8470 that is said to have been involved in the accident belongs to the 2nd appellant. The vehicle in this case was not seized by the police on the spot. Four days after the accident it was seized. The 2nd appellant - the owner of the vehicle has not filed an independent written statement resisting the claim of the 1st respondent - claimant. Instead, he adopted the counter filed by the 1st appellant who denied the factum of accident and driving the scooter by him at the appropriate time. Consequently, there has been no gainsaying about the fact that the scooter involved in the accident indeed was Bajaj chetak scooter bearing No. AP 5A 8470. As can be seen from the evidence on record, the 1st appellant was proceeded against by the investigating agency for the accident and was

prosecuted before the Court of the Sub-Divisional Magistrate, Rampachodavaram in C.C. No. 63 of 1991. As can be seen from Ex.B2, the criminal case ended in acquittal giving benefit of doubt to the accused. The contention that Ex.A1 - certified copy of the first information report does not contain the name of the driver of the scooter, Ex.A3 - certified copy of the inquest report does not contain the name of the driver of the scooter and there has been no reference in Ex.A5 - Photostat copy of the Motor Vehicle Inspector's report is of no consequence. Ultimately having regard to the fact that immediately after investigation charge-sheet was laid under Ex.B.3, the absence of the name inter alia in the said documents always and in all circumstances is a matter of appreciation by the Court and it cannot be a decisive factor to conclude that the 1st appellant was not the driver of the scooter at the appropriate time. True, the criminal case ultimately ended in acquittal. The finding of the criminal court is certainly not binding upon the tribunal. As can be seen from Ex.B2, as afore discussed, the criminal court found the accused not guilty by giving benefit of doubt for paucity of evidence and on account of the fact that the crucial witness viz., the claimant could not identify the scooterist. There has been no positive finding given by the trial court that the 1st appellant was not the driver of the vehicle at the appropriate time. It may be reiterated here that there has been no gainsaying of the fact that the vehicle involved in the accident in which the wife of the claimant was dashed against and died was Bajaj chetak bearing No. AP 5A 8470, the owner thereof is obviously the 2nd appellant. It appears he was examined during the course of investigation by the investigating agency and a statement was recorded by the investigating agency from him. The certified copy of the said statement was marked in this case as Ex.A6. Unfortunately the 2nd appellant has not chosen to come into the witness box to deny the involvement of his scooter in the accident and further to deny the statement purported to have been recorded by the investigating agency from him. The contention that since it is in the nature of previous statement its user is for corroboration of the maker and it cannot be treated as a substantive piece of evidence merits no consideration for the mere reason that there is no statement given on oath by the 2nd appellant before the Court in which event Ex.A6 would have been relegated to the status of a previous statement. Although the said statement was recorded by the investigating agency u/s 161 of the Code of Criminal Procedure and its user is limited for the purpose of contradicting the witness in view of the express prohibition contained in Section 162 of the Code of Criminal Procedure, such a bar is not there when the statement is used in the civil proceeding. The bar engrafted u/s 162 of the Code of Criminal Procedure applies only to a criminal trial when a person whose previous statement has been recorded by the investigating agency is examined as a witness. Therefore, Ex.A6 statement can be relied upon since there is no legal prohibition. In this statement the 2nd appellant is said to have squarely admitted that the scooter, which involved in the accident, was driven by the 1st appellant - his brother. Having regard to the non-examination of the 2nd appellant coupled with Ex.A6 I am of the considered view that the finding of the tribunal that appellant Nos.1 and 2 are responsible

being driver and the owner of the scooter respectively is quite unassailable. Therefore, there is nothing to interfere with the said finding recorded by the tribunal.

6. As regards the assessment of the compensation the learned tribunal proceeded on the premise that the claimant was a dependant on the deceased - his wife. The very basis upon which the compensation was assessed appears to be not correct. Even if the wife is said to have been working the husband will not become a dependant on the wife. Having regard to the society wherein the deceased and the claimant used to reside the legal obligation is cast upon the husband to maintain his own family but not on the wife to maintain the husband and her children. The tall claim of the claimant that he was sick and was not able to do any work and that, therefore, he was a dependant on the wife has not been supported by any other independent evidence. Having due regard to the interested testimony of the claimant it cannot be accepted without any pinch of salt. For paucity of evidence in regard thereto, the claim of the claimant that he was a dependant cannot be countenanced. While that is the case, the claim of the minor who is not a claimant in this case cannot also, for the self-same reason, be countenanced. The minor becomes the dependant of the father but not of the mother. Mother has no legal obligation to maintain the children unlike the father. Therefore, assessment of compensation on the basis of the dependency is quite unexpected of in a case of this sort. Nevertheless, it is a case where the wife of the claimant died in a motor accident. The damage sustained by the family in consequence thereof cannot be denied. The death was on account of the tortious act on the part of the driver of the offending vehicle. The claim for compensation is based both on the basis of civil wrong and also on the basis of the relevant provisions contained in the Motor Vehicles Act. Therefore, there can be no dispute that a person who is responsible for the tortious act and the person who is vicariously liable being the owner of the vehicle for the tortious act of the driver cannot escape the liability to pay the necessary damages. The point that squarely falls for determination having regard to the peculiar facts of this case would be to what quantum they are liable. Had the deceased been alive she would have rendered services to the family by attending upon her husband and the children. Even if she is considered to be an earning member the other members of the family cannot be considered as her dependants. In such an event the loss to the family on account of the death of the deceased would be the assistance if any she rendered to the family by earning by herself. So the compensation should be assessed on the basis that there has been loss of service to the family which can be effectively substituted by engaging any person by paying salary or wages. That loss to the family shall have to be quantified in terms of damages. If the earning of the deceased is believed then the supplemental income to the family should be the basis to be quantified as compensation. In this case, ignoring this legal position the tribunal has fallen into an error by assessing the compensation on the premise of the dependency of the husband and the minor daughter on the deceased.

7. As discussed hereinabove, the services that have been rendered by the deceased to the family shall have to be quantified. It is in the evidence that the work place where the deceased used to work has been closed for the last eight months preceding the date of accident and the death of the deceased. If the claimant was expected to have engaged a domestic servant for rendering services he would have definitely paid wages to the servant at the rate of Rs.30/- per day. The deceased in this case died at an age of 30 years. Her assistance to the family would be only for a particular period beyond which it cannot be expected of. But her assistance to the husband would be continued as long as both of them are alive. In that view of the matter it is a loss to the claimant throughout his life. He having been aged 35 years at the appropriate time would have received the assistance of the deceased for another period of 35 years having regard to the longevity that has been fixed in this country on an average basis. As years pass on it would be reduced and at a latter part of the life it is nothing but a mere companionship than assistance. In that view of the matter the compensation can be granted in a lumpsum for the loss of services to be rendered by the deceased to the family and services towards the domestic chores at Rs.25,000/-. The claimant on account of the death of his wife is entitled to the compensation towards loss of consortium. Therefore, another amount of Rs.10,000/- should be granted to him towards loss of consortium. The incidental expenses he incurred on account of the death of his wife should be quantified at Rs.2,000/-. In all the claimant is entitled to an amount of Rs.37,000/-.

8. As regards the liability, having regard to the evidence of R.W.2 - 1st appellant himself, obviously it is a case where he had no driving licence at the relevant time. Therefore, it is a clear case where having known that he had no valid driving licence to drive the vehicle the owner entrusted the vehicle to him and thereby breached the condition incorporated inter alia in the insurance policy. Therefore the insurer cannot be mulcted with any damages in this case. The finding of the tribunal that the 2nd respondent herein is not liable in that view of the matter cannot be assailed. The liability is only that of the 1st and 2nd appellants.

9. In the result, the appeal is allowed in part while holding that 1st and 2nd appellants are jointly and severally liable to pay the compensation to the 1st respondent - claimant. There shall be an award in favour of the 1st respondent - claimant for an amount of Rs.37,000/- with interest at 9% pa from the date of petition till realization.