
(2014) 07 AP CK 0061
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 748 of 2009

Burra Narsaiah

APPELLANT

Vs

Mova Venkateswar Rao

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)

Citation : (2014) 07 AP CK 0061

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Vemuganti Ram Chander Rao, Advocate for the Appellant; P. Bhanu Prakash, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

U. Durga Prasad Rao, J.—The point for determination in this MACMA filed by the claimants against the Award dated 23.10.2006 in O.P.No. 881 of 2005 passed by the Chairman, MACT-cum-District Judge, Karimnagar (for short the Tribunal) is whether the claimants being brothers of the deceased Burra Venkataiah can claim compensation for loss of earnings of the deceased as his legal representatives.

2. The facts in short shrift are thus:

a) The claimants and deceased Burra Venkataiah are own brothers. The claimants are residents of Irukulla Village in Karimnagar Mandal, whereas the deceased was residing in the adjacent Durshed Village and was aged 40 years. As per the claimants, the deceased was grazing the sheep of PW.3 who runs the mutton shop and a hotel in Durshed Village. While so, on the early morning of 21.08.2004 at about 5:30am, when the deceased was sleeping near the cattle shed of PW.3, a lorry bearing No. AP 9 U 3447 proceeding from Karimnagar to Godavari Khani being driven by its driver at high speed and in a careless manner went and rammed into the hotel and hit the deceased causing his instantaneous

death. The claimants on the plea that the accident was occurred due to the fault of the lorry driver and that the deceased used to earn Rs. 3,000/- p.m and they were depending on his earnings and now they lost his support, have filed O.P.No. 881 of 2005 against respondents 1 to 3, who are driver, owner and insurer of the offending lorry and claimed Rs. 3,00,000/- as compensation.

b) The claim against 1st respondent was dismissed for want of taking steps.

c) Second respondent remained ex parte.

d) Third respondent/Insurance Company filed counter and opposed the claim by denying all the material averments made in the petition and contended that the driver of the lorry had no valid driving licence.

e) During trial, PWs.1 to 3 were examined and Exs.A1 to A6 were marked on behalf of claimants. RW.1 was examined and Exs.B1 to B3 were marked on behalf of R.3.

f) Perusal of the award would show that in respect of issue No. 1, having regard to the eye witness evidence of PW.3 coupled with Ex.A.1FIR, Ex.A.2charge sheet and Ex.A.4inquest report, the Tribunal held that the lorry driver (R.1) was responsible for the accident. Regarding issue No. 2 touching the quantum of compensation, the Tribunal though assessed the loss of earnings of the deceased at Rs. 1,87,200/- but declined to grant the compensation for loss of dependency on the observation that the claimants were not depending on the earnings of the deceased and that they are having their own earnings. Ultimately, the Tribunal granted Rs. 17,000/- only as compensation i.e., Rs. 15,000/- towards loss of love and affection; Rs. 1,000/- towards funeral expenses and Rs. 1,000/- towards transport charges. The Tribunal dismissed the contention of R.3 that the driver had no valid driving licence on the finding that R.3 failed to prove this allegation. Hence, the appeal by claimants.

3. The parties are referred to as they stood before the Tribunal.

4. Heard arguments of Sri Vemuganti Ram Chandar Rao, learned counsel for appellants/claimants and Sri P. Bhanu Prakash, learned counsel for R3/Insurance Company. R.1 is not necessary party in this appeal. Notice to R2 was unserved. However, since R.2 suffered decree before the Tribunal, his absence is not a consequence in this appeal in view of the decision reported in Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others.

5. Learned counsel for appellants impugning the award on the following grounds:

a) Firstly, he argued that the Tribunal erred in holding that the claimants are not dependants of the deceased inspite of the clear evidence of PWs.1 and 2 to the effect that the deceased was earning Rs. 3,000/- p.m and PWs.1 and 2 being his brothers were depending on his income and no rebuttal evidence adduced by respondents. He alternatively argued that even assuming that the claimants being major brothers and not solely depending on his earnings, still they cannot

be deprived of the compensation as the compensation under Motor Vehicles Act will be granted to the legal representatives of the deceased but not to the dependants alone. As the loss of earnings of the deceased due to his accidental death is a loss to his estate which is represented by the claimants as his legal representatives, they are entitled to compensation.

In this regard, he relied upon the following decisions:

i) Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai

ii) Smt. Manjuri Bera vs. Oriental Insurance Co. Ltd.

iii) Managing Director, Karnataka State Road Transport Corporation vs. K.S. Venkataramappa

iv) Gian Singh and others vs. Ram Krishan Kohli

v) United India Insurance Co. Ltd. vs. G. Satish Kumar He thus argued that the Tribunal ought not to have deprived the claimants of the loss of earnings of the deceased.

b) Secondly, challenging the quantum of compensation as too low and inadequate, learned counsel argued that the Tribunal took the earnings of the deceased only at Rs. 1800/-. It ought to have taken his earnings as Rs. 4,500/- p.m. He further submitted that to this income, the future prospects should also be added, going by the decision of Apex Court reported in Santosh Devi vs. National Insurance Company Ltd. and others.

c) Nextly, he argued that as per the decision of the Apex Court reported in Smt. Sarla Verma vs. Delhi Transport Corporation, the correct multiplier is 15. He further submitted that following the decision reported in Rajesh and others vs. Rajbir Singh and others, funeral expenses may be enhanced.

He thus prayed to enhance the compensation by allowing the appeal.

6. Per contra, while supporting the judgment, learned counsel for respondent No. 3/Insurance Company argued that the deceased and claimants were separated more than 10 years prior to the date of his death and living separately and that is why the deceased was working in a hotel in a different village and sleeping there. Considering all these facts, the Tribunal rightly held that virtually there were no connections between the deceased and the claimants and they were not his dependants and accordingly granted compensation for loss of estate and funeral expenses alone and there is no need to review the same. He thus prayed for dismissal of the appeal.

7. Point: A perusal of the award would show that the Tribunal basing on the evidence of PW.1 that since last 10 years all the three brothers were living separately, has come to conclusion that all the three brothers were separated and the claimants were not the dependants of the deceased. Therefore, though

the Tribunal assessed the loss of earnings of the deceased at Rs. 1,87,200/-, did not award the said amount as compensation to the claimants but only awarded Rs. 17,000/- towards loss of estate and funeral expenses. It must be said that the approach of the Tribunal is not correct. Though PW.1 admitted in the cross-examination that they were living separately since last 10 years but the basic point in his evidence is that the claimants were depending on the earnings of the deceased who was working as a shepherd under PW.3. The respondents have not adduced any contra evidence in this regard. So merely because the claimants and deceased were living separately, it cannot be concluded that the deceased was not contributing his earnings to his brothers atleast occasionally, particularly when there is no contra evidence. Therefore, the claimants cannot be denied compensation for loss of earnings of the deceased/ loss of dependency. Alternatively, even assuming for arguments sake that the claimants are not the dependants of the deceased, still they cannot be deprived of the compensation because of the fact that they are the legal representatives of the deceased and representing his estate. Admittedly, the claimants are his brothers and hence they are his legal representatives. Whether dependency of claimants alone is the criterion or their status as legal representatives of the deceased is the touch stone for awarding compensation is no more res integra. In Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai's case (2 supra), Hon"ble Apex Court has not taken the dependency as a factor for compensation. In that case a 14 year old boy who was not the breadwinner of the family was run over by a bus and died. His brothers claiming to be the heirs and legal representatives of the deceased, filed claim petition under M.V. Act. The respondent/ Corporation questioned the entitlement of the claimants. In that context, while explaining the term legal representative, Hon"ble Apex Court held thus:

Para-11 xxxx xxxx

The expression legal representative has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines legal representative as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the

deceased to make it. The proviso to sub-section (1) of Section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives.

So, dependency cannot be taken as a sole factor for awarding compensation though in some cases a legal representative may also incidentally happens to be the dependent of the deceased.

The Supreme Court further observed thus:

Para-15 xxxx xxxx

The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression legal representative in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

The Supreme Court ultimately held that brother of a person who died in a motor vehicle accident is entitled to maintain the petition u/s 110A of MV Act, if he is a legal representative of the deceased.

8. The above decision was followed in the cited decisions (3 to 5 supra). This High Court in United India Insurance Co. Ltd. vs. G. Satish Kumar's case (6 supra) also held in similar lines. Therefore, the finding of the Tribunal cannot be countenanced.

9. Now coming to quantum of compensation, the Tribunal for want of proper evidence regarding earnings of the deceased, has taken his notional income as Rs. 1800/- p.m. I see no illegality in it. However, going by the decision of Apex Court in Santosh Devi vs. National Insurance Company Limited's case (7 supra), a sum of Rs. 300/- is added towards future prospects. Thus, his annual income comes to Rs. 25,200/- (Rs. 2100 x 12). From this 1/3rd is deducted towards his personal expenditure. The balance comes to Rs. 16,800/- (Rs. 25,200 x 2/3rd). Then considering the age of the deceased as 40 years, the Tribunal took 13 as multiplier. The appellants claimed that 15 would be the appropriate multiplier. Having regard to the fact that in this case the compensation is awarded to siblings being the legal representatives and not to the widow and children of the deceased who are not there, 13 can be accepted as multiplier in this case. Thus, the loss of earnings comes to Rs. 2,18,400/- (Rs. 16,800 x 13). Then the Tribunal awarded a niggardly amount of Rs. 1,000/- towards funeral expenses. Considering its inadequacy the compensation is enhanced to Rs. 5,000/-. Thus the total compensation payable to the legal representatives of the deceased under different heads is detailed as below:

Loss of dependency

Rs. 2,18,400

Funeral expenses

Rs. 5,000

Transport charges

Rs. 1,000

Loss of love and affection

Rs. 15,000

Total

Rs. 2,39,400

So, the compensation is enhanced by Rs. 2,22,400/- (Rs. 2,39,400/- minus Rs. 17,000/-).

10. The evidence of PW.1 would reveal that apart from claimants, there are two sisters to deceased by name Lachavva and Narsavva. So under law, they are also the legal representatives of the deceased and entitled to compensation along with the claimants though they are not being shown as parties to the O.P. However, in view of the above evidence, this Court can allow compensation to them also. Therefore, the claimants and the two sisters i.e., Lachavva and Narsavva shall share the compensation equally. The Tribunal shall issue notice to them and pay their due compensation.

11. In the result, this appeal is partly allowed and ordered as follows:

- a) The compensation is enhanced by Rs. 2,22,400/- with proportionate costs and interest at 7.5% p.a from the date of filing this appeal till the date of realization.
- b) The respondents are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.
- c) On such deposit or realisation, the claimants and their sisters Lachavva and Narsavva shall equally share the compensation.
- d) No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.