

(2009) 03 AP CK 0070

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 3306 of 2003 and 1289 of 2004

Chakali Narasappa and Others

APPELLANT

Vs

K. Ramanna and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)
Motor Vehicles Act, 1988 — Section 147(1), 170

Citation : (2010) ACJ 1601 : (2009) 5 ALT 33

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : B. Siva Kesava Reddy, in C.M.A. No. 3306 of 2003 and Ravi Shankar Jandhyala, in C.M.A. No. 1289 of 2004, for the Appellant; B. Siva Kesava Reddy, for Respondents 1 to 4 in C.M.A. No. 1289 of 2004, Ravi Shankar Jandhyala, for 2nd Respondent in C.M.A. No. 3306 of 2003 and K. Rathangapani Reddy, in C.M.A. No. 1289 of 2004, for the Respondent

Judgement

V.V.S. Rao, J.—These two appeals - one by United India Insurance Company Limited (insurer) and the other by dependents of the deceased (claimants) - are being disposed of by this common order, as it would be convenient to do so. The parties are referred to as they are arrayed in C.M.A. No. 1289 of 2004 (sic. Insurer's) (claimant's appeal).

2. Chakali Narasimhulu, resident of Julakal village in Kurnool District died in a motor accident on 15-11-2001 when he and three others were going in the lorry as labourers for loading groundnut. At about 7.30 p.m., lorry reached Kilometer stone No. 181/8 on N.H.7, the lorry fell to left side. Chakali Narasimhulu died on the spot. His parents (respondent Nos. 1 and 2 herein), his second wife (third respondent herein) and his son (minor son) through second wife filed M.V.O.P. No. 339 of 2002 claiming compensation of Rs. 3,50,000/- before the Motor Accidents Claims Tribunal-cum-Additional District Judge, Kurnool. It was alleged in the petition that Chakali Narasimhulu had married Lakshmi Devi (sixth respondent herein) ten years prior to his death but never lived with her and he

had no marital relationship with her. Subsequently, it was alleged that Lakshmi Devi married one Maddileti, and Narasimhulu took Dargamma as his second wife. Due to this, it is alleged that Lakshmi Devi had no claim for compensation. It was also alleged that deceased was aged 25 years and was earning Rs. 100/- per day.

3. As it generally happens in motor accident cases, the driver and the owner of the lorry remained ex parte. The first wife of the deceased also remained ex parte. The insurer contested the matter alleging that Chakali Narasimhulu was non-fare paid gratuitous passenger travelling in the lorry and therefore, insurance policy is not required to cover the risk of deceased. They also disputed the quantum of compensation. Further, it is alleged that the accident vehicle had no valid permit, fitness certificate and valid insurance as on the date of accident.

4. The matter was enquired into. The father of the deceased gave evidence as P.W.1. P.W.2 is a co-labourer, who travelled along with the deceased on the fateful day. The claimants also examined P.Ws.3 and 4 to prove other facts in issue. Exs.A-1 to A-4 were also marked. Though serious contest was projected in their counter, insurer curiously did not lead any oral or documentary evidence. Be that as it is, on considering evidence, learned Tribunal held that the accident occurred due to rash and negligent driving of driver of the lorry involved in the accident bearing No. AP 12 T 6151 belonging to fifth respondent herein. On the question of compensation, learned Tribunal determined a sum of Rs. 1,73,000/- taking into consideration by fixing annual income of the deceased as Rs. 15,000/- per annum and applying the multiplier 17 (Rs. 15,000-Rs.5,000 = Rs. 10,000 x 17 = Rs. 17,000). In addition to loss of dependency, learned Tribunal also awarded Rs. 3,000/- towards funeral expenses. Learned Tribunal apportioned the compensation to respondents 1 and 2 (parents), respondent No. 4 (minor son) and respondent No. 6 (first wife) and denied any share to respondent No. 3 (second wife) in the awarded amount. Though as a guardian of respondent No. 4, she was authorized to withdraw the amount as per eligibility.

5. Learned Counsel for insurer relied on Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, and Boddupally China Venkanna and Others Vs. Edulla Narayana Reddy, , and submitted that deceased was travelling as an unauthorized passenger in the goods vehicle and therefore, u/s 147(1) of the Motor Vehicles Act, 1988 (the Act, for brevity), insurance policy is not required to cover such unauthorized passengers. He also disputes the quantum of compensation awarded by the Tribunal. The learned Counsel appearing for claimants in both the appeals contend that Chakali Narasimhulu was earning Rs. 100/- per day and therefore, the Tribunal was in error in awarding lesser amount. Learned Counsel appearing for claimants' appeal also submits that as the deceased's first wife Lakshmi Devi had already married long ago, Dargamma alone is entitled for compensation and she cannot be denied any share in the compensation.

6. Insofar as appeal of the insurance company is concerned, it deserves to be dismissed for two reasons. Mere allegations in the counter affidavit would not

amount to proof of such allegation. None connected with the insurance company even spoke about counter case nor any documents were marked. They did not even bother to mark the policy of insurance. Secondly, a copy of policy of insurance placed before this Court shows that the owner of the lorry paid premium to cover the risk of six labourers travelling in the motor vehicle for the purpose of loading and unloading. The evidence of P.W.2 supports the case of claimants that deceased was travelling along with P.W.2 to go to Pebbare for loading groundnut. Therefore, the submission of insurance company has to be rejected as appellant did not obtain permission u/s 170(b) of the Act and therefore, applying the ratio in *National Insurance Co. Ltd., Chandigarh Vs. Nicolletha Rohtagi and Others*, , any challenge in relation to quantum of compensation and question of negligence cannot be entertained.

7. Insofar as claimants' appeal is concerned, learned Tribunal correctly came to the conclusion that second wife has no right to claim a share in the compensation as she is not legal heir of the deceased. Indeed, as held by this Court in *Mallipeddy Sessaiah (died) and Others Vs. Nadendla Tulasamma (died) and Others*, , second wife is not entitled to succeed to property of husband.

8. In *Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others*, , Supreme Court held that:

The marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law and she is therefore not entitled to the benefit of Section 125 of Code of Criminal Procedure, 1973 (for brevity, the Code) or the Hindu Marriage Act, 1955. Marriage with a person having a living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under Sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law.

9. Learned Counsel for claimants submit that as per the evidence of P.W.4, first wife Lakshmi Devi married Maddileti and therefore, Dargamma alone should be treated as legitimate wife. This cannot be accepted. Even if some importance can be given to evidence of P.W.4, Lakshmi Devi, first wife of deceased cannot be said to have ceased to be the wife of deceased unless there is a valid dissolution of marriage by the competent Court. Unless and until, it is proved that the deceased validly dissolved the marriage with first wife, his marriage with second wife cannot be recognized by Court. Therefore, the finding of learned Tribunal that Dargamma is not entitled for any compensation except a limited right as a

Guardian of fourth respondent herein to withdraw the amount, does not warrant any interference.

10. Insofar as the claim of compensation is concerned, there was no evidence to show that he was earning Rs. 100/- per day. Learned Tribunal, therefore, correctly fixed the annual income as Rs. 15,000/- per annum considering the age as 25 years and applied multiplier 17 correctly. However, as per the decision of Supreme Court in P.C. Kakar Vs. Commandant, Military Hospital, Trimalgiri and Others, , learned Tribunal ought to have awarded Rs. 15,000/- towards loss of estate. To that limited extent, the appellant has to succeed. Accordingly, C.M.A. No. 3306 of 2003 is partly allowed awarding Rs. 15,000/- towards loss of estate in addition to the amount already awarded by the Tribunal. The enhanced amount shall carry interest at 8% per annum and shall be apportioned among the three legally entitled claimants, i.e., Chakali Narasappa, Sunkulamma and Eranna.

11. C.M.A. No. 3306 of 2003 is accordingly partly allowed as indicated hereinabove and C.M.A. No. 1289 of 2004 filed by United India Insurance Company Limited is dismissed without any order as to costs.