
(2000) 02 AP CK 0075
In the Andhra Pradesh High Court

Chittaveni Siddavva and Others

APPELLANT

Vs

K. Kastoori and Others

RESPONDENT

Date of Decision : 24-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Citation : (2000) 2 ACC 534

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Judgement

V. Eswaraiah, J.—The claimants filed this civil miscellaneous appeal against the order passed in O.P. No. 329 of 1990, dated 6.9.1993 by the Motor Accidents Claims Tribunal, Medak District, at Sangareddy.

2. The first appellant is the wife of the deceased-Mallesham and appellants 2 to 4 are the minor children of the deceased. The first respondent is the owner of the offending vehicle; second respondent is the insurer and the third respondent is the APSRTC.

3. The brief facts of the case are that on 1.2.1990, while the deceased-Mallesham was travelling in the lorry bearing No. ATL 5361 belonging to the first respondent, met with an accident due to the rash and negligent driving of the driver of the said lorry, which was said to have been dashed against the APSRTC bus bearing No. AEZ 5636, which was coming from the opposite direction. As a result of which, the lorry fell to its left side and the deceased alongwith several others travelling in the said lorry died and some other persons travelling in the lorry sustained injuries.

4. Basing on the oral and documentary evidence available on record, i.e., PWs. 1 to 3, RWs 1 to 5, Exs. A1 and B1 to B4, the Tribunal held that the evidence on record is abundantly clear to the effect that the accident was occurred on account of the rash and negligent driving of the driver of the lorry of the first respondent only, but not on account of the fault on the part of the APSRTC bus of

the third respondent.

5. The accident in question took place on 1.2.1990. The Motor Vehicles Act, 1988 came into force with effect from 1.7.1988. Admittedly, the accident occurred after the enforcement of the new M.V. Act, 1988.

6. With regard to the quantum of the compensation, the appellants examined P.W. 3, who was working alongwith the deceased as Mechanic at Secunderabad and who stated that the deceased was earning Rs. 1,200/- per month and he was aged, about 35 years. The copy of the inquest report in Crime No. 14/90 made u/s 174 of Cr. P.C. was marked as Ex. A1 and the age of the deceased- Malleshan was shown as 30 years.

7. Even assuming for a moment that the deceased was working as a Helper, or an agricultural labourer, his minimum earning would be atleast Rs. 20/- per day, which comes to Rs. 600/- p.m. Therefore, I think it just and proper to come to the conclusion that the deceased would get Rs. 600/- per month. If 1/3rd of the said earning is deducted towards the personal expenses, his contribution to the family would be Rs. 400/- per month, which comes to Rs. 4,800/- per annum.

8. Considering the age of the deceased which is apparent on the face of the record that it would be between 30 to 35 years, the reasonable multiplier in this case is 15.

9. If the contribution to the family at Rs. 4,800/- per annum by the deceased and the multiplier as "15", is taken into consideration, the total compensation will arrive at Rs. 72,000/-.

10. Therefore, the appellants are entitled to the compensation of Rs. 72,000/- as against the compensation Rs. 56,000/- awarded by the Tribunal. The Court below granted interest @ 10% per annum, which is contrary to the principles laid down by the Apex Court and as well as this Court. Therefore, I hold that the appellants are entitled to the interest at the rate of 12% interest per annum.

11. The Tribunal held that the offending lorry was a goods vehicle and the deceased was a gratuitous passenger, and, therefore, the Insurance Company is not liable to pay the compensation and the owner alone shall be held responsible. While holding so, the Tribunal dismissed the opposite party against respondents 2 and 3.

12. As far as the third respondent-Corporation is concerned, the Corporation is not liable to pay the compensation as there was no fault on the part of the Corporation. As far as the second respondent-Insurance Company is concerned, even though the offending lorry was a goods vehicle, under the New Motor Vehicles Act, the insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Therefore, the Insurance Company is liable to pay the compensation even in respect of the gratuitous passengers also as held by the Supreme Court in the case of New India Assurance Company Vs. Shri Satpal

Singh and Others, Accordingly the appellants are entitled for a total compensation of Rs. 72,000/-. In addition to that an amount of Rs. 5,000/- is granted to the first appellant towards the consortium. Thus, the total amount of compensation comes to Rs. 77,000/- payable by respondents 1 and 2 jointly and severally, together with interest at the rate of 12% per annum from the date of petition till the date of realisation. The claimants-appellants are entitled for equal shares in the compensation of Rs. 72,000/- which was enhanced by this Court from Rs. 56,000/-. However, the compensation amount that fall to the share of the minors, shall be kept in a fixed deposit in any Nationalised Bank near the place of the appellants, till they attain majority. The order of the Tribunal is accordingly modified as indicated above.

14. Accordingly, the appeal is allowed. No costs.