
(2001) 07 AP CK 0011
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1328 of 1995

Chitumalla Bhagyalaxmi and Others

APPELLANT

Vs

Md. Jafar

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2002) 2 ALD 395 Supp : (2001) 2 AnWR 554

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : H. Srinivasa Rao, for the Appellant; Kota Subba Rao, for the Respondent

Judgement

Motilal B. Naik, J.—Appellants herein are the claimants in O.P.No.759 of 1992 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Karimnagar.

2. The appellants instituted a claim petition in O.P.No.759 of 1992 before the Tribunal under Sec.166 of the Motor Vehicles Act claiming a compensation of Rs.2 lakhs for the death of Ch. Bhumaiah in a motor accident, which took place on 7.10.1991. The 1st appellant is the wife, appellants 2 to 4 are the minor children and appellants 5 and 6 are the parents of the deceased.

3. According to the appellants, the deceased Bhumaiah was working as head-master in Upper Primary School, Peddapur village of Jammikunta Mandal and was drawing a salary of Rs.3,400/- per month. On 7.10.1991 at 6 P.M. the deceased Bhumaiah was returning from Karimnagar on his scooter along with one Gurram Ram Reddy as a pillion rider. It was dark night and there was slight drizzling. The deceased could not notice the stationed lorry bearing APJ 8600, which was parked on wrong side without taking any precautions, and hit the said lorry from behind, as a result he sustained serious injuries on his head. He was immediately shifted to Government Hospital, Karimnagar. From there, he was referred to Nizam Hospital at Hyderabad, where he underwent two operations on

8.10.1991 and 24.10.1991. He was discharged on 2.1.1991, but due to further complications he was immediately shifted to Nizam Hospital. On 26.12.1991 Bhumaiah died as a result of the injuries sustained by him in the accident that took place on 7.10.1991.

4. As a result of the death of Bhumaiah, who was the sole bread winner of the family, the appellants herein made a claim before the Tribunal claiming a compensation of Rs.2 lakhs.

5. The 3rd respondent-Insurance Company opposed the claim petition denying the liability as well as the allegation that the lorry in question was parked on wrong side of the road. The driver and owner of the lorry in question remained ex parte before the Tribunal. In order to substantiate their claim, the first claimant, who is the wife of the deceased, was examined as P.W.1. P.W.2 was the pillion rider of the scooter, which was driven by the deceased at the time of the accident. On behalf of the claimants Exs.A.1 to A.12 were marked. On behalf of the 3rd Respondent-Insurance Company, none was examined, however Ex.B.1 insurance policy was marked.

6. The Tribunal, on the basis of oral and documentary evidence and in the light of the ratio laid down by the Supreme Court in Kerala State Road Transport Corporation vs. Susamma Thomas (1) considered the claim of the claimants and came to a conclusion that the monthly contribution by the deceased to the family was Rs.6,000/-. The Tribunal while applying 12 multiplier, as the age of the deceased was 38 years at the time of his death, opined that the compensation to be paid to the claimants is Rs.8,64,000/- (Rs.6000X12X12). The Tribunal also opined that an amount of Rs.15,000/- has to be awarded to the wife of the deceased towards loss of consortium. The Tribunal having found that an amount of Rs.12,741/- incurred towards medical expenditure also to be awarded the same. Thus the Tribunal opined that the compensation to be paid to the claimants in all is Rs.8,91,741/-. However, the Tribunal held that as the claimants had restricted their claim to Rs.2,00,000/-, they are entitled to a compensation of only Rs.2,00,000/-. Holding so, the Tribunal awarded an amount of Rs.2,00,000/- in all towards compensation with interest at 12% p.a. from the date of the petition till the date of realization, by award dated 18.4.1995. It is this award, which is assailed by the claimants in the present appeal.

7. We have heard Sri H. Srinivasa Rao, learned counsel for the appellants and Sri Kota Subba Rao, learned counsel for the contesting 3rd Respondent-Insurance Company.

8. The learned counsel for the appellants contended that the provision made under Sec.168 of the M.V. Act, 1988 empowers the Tribunal to award just and reasonable compensation without regard to the claim made by the claimants, and as such, when the Tribunal has determined just and reasonable compensation that is payable to the claimants at Rs.8,91,741/-, the Tribunal could not have restricted the award to only Rs.2,00,000/- on the ground that the

claimants had claimed only Rs.2,00,000/-. He relied on a single Judge's (Dr. MBN, J.) decision of this Court in *New India Assurance Company Ltd. vs. G. Lakshmi* (2) and stated that in view of the ratio laid down by this Court in the said case, without regard to the claim made by the claimants, the obligation is on the Tribunal to award just and reasonable compensation. The learned counsel contended that in the old Act, the relevant provision for determination of compensation is Section 110-B. According to the counsel, a similar provision is also made in the next Act without there being any change, therefore, the claimants are entitled for the compensation arrived at by the Tribunal extending benefit of the above decision (2nd supra). He also stated that as a precautionary measure the claimants have filed an application in C.M.P.No.14244 of 1995 seeking to amend the prayer and pleaded to grant just and reasonable compensation to the claimants-appellants.

9. On the contrary, the learned counsel for the 3rd Respondent-Insurance Company Sri Kota Subba Rao, submitted that the compensation awarded by the Tribunal is just and proper in the sense that even if the ratio laid down by the Supreme Court (1 supra) is relied, the Courts have to take into consideration several factors in awarding just and reasonable compensation.

10. In the light of the rival submissions, the point for consideration is:

What is the just and reasonable compensation to be awarded to the appellants?

11. There is no dispute with regard to the age of the deceased, who died in a motor accident on 7.10.1991 and about the income of the deceased. Admittedly, the deceased, who was aged about 38 years at the time of his death, being head-master of a school, was earning a salary of Rs.3,400/- per month. The learned counsel for the appellant has also placed reliance on the judgment rendered by a learned Division Bench of this Court, in which one of us (Dr. MBN, J.) is a Member, in C.M.A.No.2058 of 1992, dated 12.6.2001, and stated the Division Bench following the ratio laid down by the Supreme Court in the decision (1 supra), awarded reasonable compensation considering the future prospectus also.

12. In the above judgment it was held by this Court that future prospects of the deceased has also to be considered as one of the criterion for awarding just and reasonable compensation, keeping in view the principle laid down in the decision cited (1 supra). In C.M.A.No. 2058 of 1992, it was elaborately discussed about the uncertainties of life and Division Bench held that some guess work has to be done having regard to the age of the deceased, his qualifications in a particular specialized field and the position held by him at the time of his death, while determining the loss of earnings.

13. Following the said view, if we take into consideration the age of the deceased being 38 years, and his status as an head master in an Upper Primary School, some guess work has to be done in this case also. For determining compensation towards loss of earnings, the Tribunal had applied multiplier 12. In the set of circumstances, having regard to the discussion made above and the age and

earning capacity of the deceased, we are of the vie