

(1987) 04 AP CK 0009
In the Andhra Pradesh High Court

D. Balakrishna

APPELLANT

Vs

DR. Prabha Hingorani and Others

RESPONDENT

Date of Decision : 16-04-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(a)

Citation : (1987) 2 ACC 415 : (1988) ACJ 883

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Judgement

P.A. Choudary, J.—The deceased, aged about 31 years, was killed on 21-6-80 in an automobile accident caused by the rash and negligent driving of a lorry bearing ADT No. 7415 coming from the opposite direction and to the right of the middle of the road hitting the deceased's scooter. The wife of the deceased (the 1st claimant), his posthumous child (the 2nd claimant) and his mother had filed a claim for compensation under the Motor Vehicles Act against the owner of the lorry and the Insurance Company with which the lorry was insured. In their claim petition, the claimants claimed a total sum of Rs. 4,00,000/- towards compensation under the heads of loss of life, loss of earning power and loss of consortium. In support of that claim, they examined the 1st claimant as PW 1, one Sunder (Proprietor of Krishna Enterprises) as PW 2, and one Chary as PW 3 who was the eye-witness in the case. They also exhibited Exs. A-1 to A-7. On behalf of the 1st respondent, it was admitted in his counter that he was the owner of the lorry and that the lorry was insured with the 2nd respondent. He denied that there was any rash and negligent driving on the part of the driver of the vehicle, and asserted that the accident was caused on account of the scooter being driven at a top speed and the scooterist losing control of the scooter. The 2nd respondent-Insurance Company filed a counter denying the monthly earning of the deceased and stating that the amounts claimed are excessive. The Insurance Company also pleaded that the deceased was responsible for contributory negligence and that its liability was restricted to the statutory liability u/s 95(2)(a) of the Motor Vehicles Act. On behalf of the respondents the

owner of the lorry and the driver of the lorry were examined as R.Ws. 1 and 2 respectively and Exs. B-1 to B-4 were marked. Ex-B4 is a true copy of the insurance policy.

2. The Lower Court has framed as many as seven issues although only issues 1 and 2 are really relevant. PW 3, the eye-witness in this case, deposes that he saw the lorry coming at a top speed to its extreme right going beyond the middle line on the road and hitting the scooter. The contention of the 2nd respondent h that PW 3 was not cited as a Witness in the criminal court and, therefore, he should not be believed. The Lower Court, having rejected that contention of the respondents and having specifically held that the evidence of PW 3 was consistent and nothing was elicited to show that he was in any interested in the parties or in the result of the case, held, rather inconsistently in another part of its judgment that the evidence of PW 3 was not sufficient to hold that the lorry came to the wrong side of the road and dashed against the scooter. The evidence of RW 2, the lorry driver, shows that the accident occurred to the extreme right of the lorry beyond the middle line of the road. It is also in the evidence of PW 3 that the lorry came in the opposite direction and overtake a tempo van and went to the wrong side of the road and dashed against the scooter while he was at a distance of 100 yards from the place of the accident. He also deposes that the lorry stopped at a distance of 50 or 60 yards after the accident. The Lower Court clearly found on the basis of the evidence of RW 2, that the scooter had fallen in the middle of the road and the scooterist had fallen on the pavement of his left side. From the above, it is clear that the lorry came in the opposite direction to the scooter and being driven at a top speed with negligence, caused the accident at a point beyond the middle line of the road towards the scooter's side. From these circumstances, which are fully established by the evidence of PW 3, I find no justification whatsoever in the Lower Court holding that the deceased scooterist was responsible for the accident by his own negligence. Leaving the law aside and taking a common sense point of view of the matter, one can find hardly any justification for the perverse view of the lower Court that the scooterist, who was thrown out of his scooter to his left side on to the pavement by the lorry, was responsible for the accident I, therefore, hold that the accident was caused by the rash and negligent driving of the Lorry coming in the opposite direction beyond the middle point of the road and on the wrong side of the road.

3. Then remains the question of compensation payable to the claimants. It is in evidence that the deceased was a mechanical engineer. He passed B.E. Hons. Ex. A-1 is his degree certificate and Ex. A-2, his appointment order. He was being paid monthly Rs. 3,000/- and odd and was planning to join as a director of a private limited company, which was registered recently. For a period of three years from 1976 to 78, he worked in Iran being paid 2,000 U.S. Dollars per month. There can be little doubt that these local lorries have become a menace and the lorry in question had cut short a young and promising life. Taking the longevity to life as 75 years and the deceased's monthly earning and his potential for future earning at Rs. 5000/- per month, I do not find any

justification for rejecting the claim of Rs. 4,00,000/- made by the claimants. The 2nd petitioner, who was a posthumous child, was one year old. It needs care and attention, education and upbringing for a period of at least 20 years. If the deceased had been alive, he would have easily met these demands of the child out of his own earnings. The fact that the mother is a Doctor and earning member makes no difference for the amount of compensation that should be paid. Further, the 1st claimant had lost her consortium for over a period of 40 years. Considering all these circumstances, I hold that a sum of Rs. 4,00,000/- would be appropriate compensation to be awarded to the claimants. I accordingly award a sum of Rs. 4,00,000/- towards compensation with interest at 16 per cent per annum from the date of the claim as payable to the claimants.

4. The question then arises, whether the liability to pay this sum of Rs. 4,00,000/- is to be shared jointly and severally by both the respondents. It is argued by Sri LA. Naidu, learned Counsel for the Insurance Company, that u/s 95(2) of the Motor Vehicles Act, the Insurance Company's liability is limited to the amounts which have been mentioned therein. I have examined this matter in a recent judgment in C.M.A. Nos. 1012 and 935 dated 13-3-87 and held that the limits mentioned therein are the minimum limits with an Insurance Company must cover and that independent of those limits it is open to the Insurance Company to cover the liability of the insured arising out of the accident. On an examination of the terms and conditions of the policy, I hold that, under the policy, the Insurance Company undertakes to indemnify the insured against all sums including the claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injuries to any person caused by or arising out of the use of the motor vehicle. I do not find any limit in that policy. I accordingly hold, negating the contention of the learned Counsel Sri I.A. Naidu that the Insurance Company shall also be jointly and severally liable to satisfy the above award. I, therefore, direct the Insurance Company to pay to the 1st claimant a total amount of Rs. 3,80,000/- towards her share and the share of the minor child, and to the mother (the 3rd claimant) Rs. 20,000/- towards her share of the compensation, with interest at 16 per cent per annum thereon from the date of the claim, within three months from the date of receipt of this order. The cross objections filed by the claimants are accordingly allowed with costs. The appeal filed by the owner of the lorry is dismissed and the owner of the lorry shall pay the costs of the appeal and the cross-objections to the claimants.