
(2014) 04 AP CK 0079
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 492 of 2009

Deekonda Nagaiah and Another

APPELLANT

Vs

M/s. Laul Transport Corporation and Another

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A(3)

Citation : (2014) 04 AP CK 0079

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

Bench : Single Bench

Advocate : B. Parameswara Rao, Advocate for the Appellant; S.N. Padmini, Counsel for Respondent No. 1, Advocate for the Respondent

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.—Challenging the award dated 06.12.2004 in O.P. No. 2412 of 2001 passed by the Chairman, M.A.C.T-cum-IX Additional Chief Judge, City Civil Courts (Fast Track Court), at Hyderabad (for short "the Tribunal"), the claimants preferred the instant appeal.

2. The factual matrix of the case is thus:

a) The claimants 1 and 2 are the parents of the deceased girl-D. Sravani, aged about 8 years. Their case is that on 28.09.2001 at about 8:25 am, when the deceased was proceeding from her house to Geetanjali Vidyanikethan as pedestrian on the extreme left side of the road, one lorry bearing No. HR 38 D 8952 of 1st respondent being driven by its driver at high speed and in a rash and negligent manner, dashed the deceased from back side. In the resultant accident, the deceased died on the spot. It is averred that the accident was occurred only due to the rash and negligent driving by the driver of the offending lorry. It is pleaded that the deceased was brilliant and meritorious student and due to sudden demise of the deceased, the claimants lost their love and affection. On these pleas, the claimants filed O.P. No. 2412 of 2001 against

respondents 1 and 2, who are owner and insurer of the offending lorry and claimed Rs. 1,00,000/- as compensation under different heads mentioned in the O.P.

b) Claimants filed rejoinder and pleaded that the accident spot is very nearer to Gandhi Statue which is situated at bus stop and four roads junction and the same is evidenced in F.I.R., Inquest report and in scene of offence report. The claimants contended that the driver of the offending lorry failed to follow traffic rules and did not apply horn and breaks etc., and the place of accident is heavy traffic place always crowded with public.

c) Respondent No. 1 remained ex parte.

d) Respondent No. 2/Insurance Company filed counter and opposed the material averments made in the O.P. and urged to put the claimants in strict proof of the same. R2 contended that the Tribunal has no jurisdiction to entertain the claim since neither the accident was occurred within its jurisdiction nor petitioner or respondent are the residents within its jurisdiction. R.2 contended that the accident was occurred due to the fault of the deceased alone as she failed to observe the traffic rules, as such the claimants are not entitled for any compensation. R.2 filed additional counter and submitted that as per the inquest report and scene of offence, the accident was occurred on the road in front of D. Bhumayya's house and as such due to carelessness and negligence of the deceased only the accident was occurred and the claimants falsely pleaded that the lorry driver was responsible for the accident. It thus prayed to dismiss the appeal.

e) During trial P.Ws. 1 and 2 were examined and Exs. A.1 to A.7 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of claimants.

f) A perusal of the Award would show that Tribunal having relied upon the oral evidence of PW. 2-eye witness coupled with Ex. A.1-F.I.R., Ex. A.2-charge sheet, Ex. A.3--inquest report and Ex. A.4--observation report held that the accident was occurred due to the rash and negligent driving by the driver of the offending lorry.

g) Issue No. 2 which relates to quantum of compensation, the Tribunal awarded compensation of Rs. 57,000/- together with interest at 9% p.a. from the date of O.P. till the date of realization under different heads as follows:

Rounded off to Rs. 57,000/-.

Hence, the appeal by claimants on the ground of inadequacy of compensation.

3. Heard Sri. B. Parameswara Rao, learned counsel for appellant and Smt. S.N. Padmini, learned counsel for Respondent No. 2/Insurance Company. R.1 is stated to be not necessary party in this appeal.

4. Criticizing the compensation as low and inadequate, learned counsel for

appellants mainly argued that Tribunal while computing the compensation ought to have adopted multiplier system following second schedule of Motor Vehicles Act, 1988 (for short "MV Act"). He submitted that Honourable Apex Court in a recent decision reported in Puttamma and Others Vs. K.L. Narayana Reddy and Another, while recommending the Central Government for amending the out-dated second schedule table provided u/s 163A of MV Act, has provided certain fixed compensations for the death of persons of different age groups. Learned counsel submitted that the compensation may be enhanced in the lines of that decision.

5. Per contra, learned counsel for respondent No. 2/Insurance Company opposed the appeal on the submission that the compensation granted was just and reasonable and there is no need to revise the same.

6. In the light of above rival arguments, the point for determination in this appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement?

7. POINT: The accident, involvement of crime lorry bearing No. HR 38 D 8952 and death of 8 year old girl--Sravani are not in dispute. The Tribunal basing on evidence on record has rightly held that accident was occurred due to the fault of driver of the lorry. It appears though the Insurance Company raised a jurisdictional issue before the Tribunal to the effect that neither the accident was occurred nor the parties concerned are the residents within the jurisdiction of the Tribunal and as such it has no jurisdiction to try MVOP, the Tribunal rightly rejected the same on the observation that as per the evidence of PW1 he was the resident of Nallakunta in Hyderabad and the respondents have not adduced any contra evidence to rebut the same. So, in the appeal the adequacy of compensation is the only point for determination.

8. It may be noted that Tribunal while deciding the issue No. 1 touching fault of the lorry driver has observed that since the claim application was filed u/s 163A of the MV Act the petitioners need not establish his fault. Thus, the Tribunal has decided the matter treating the application as one u/s 163A of MV Act. The Tribunal in all, granted compensation of Rs. 57,200/- under different heads as already stated supra. It is true that Tribunal has not followed the multiplier method as envisaged in second schedule of MV Act. That is why the claimants/appellants argued that the compensation may be enhanced in terms of recent decision of Apex Court. In Puttamma and Others Vs. K.L. Narayana Reddy and Another, while discussing the need for amendment of second schedule provided u/s 163A of MV Act, the Apex Court held as follows:

The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the

Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed u/s 163A of the Act, 1988.

9. In the instant case, since the deceased girl was aged 8 years and the claim was u/s 163A of MV Act, compensation needs to be enhanced in the light of above decision of the Honourable Apex Court. The Apex Court has fixed an amount of Rs. 1,50,000/- for the persons more than 5 years of age. Since the deceased was aged 8 years, the compensation in this case can be enhanced upto Rs. 1,50,000/-. Determination of compensation in terms of second schedule would also comes to same amount (Rs. 15,000 x 15 minus 1/3rd).

10. In the result, this MACMA is allowed and ordered as follows:

- a) Compensation is enhanced by Rs. 92,800/- (Rs. 1,50,000 minus 57,200) with proportionate costs and simple interest @ 9% per annum from the date of OP till date of realisation.
- b) 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) Claimants shall pay the additional court fee within one month from the date of this judgment.
- d) No order as to costs in this appeal.

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