(2021) 12 TEL CK 0027

In the Telangana High Court

Case No : MACMA Nos. 30, 627 Of 2011

Depot Manager, Apsrtc, Hayathnagar And Another APPELLANT

Vs

Varkala Ramulu And 3 Others RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2021) 12 TEL CK 0027

Hon'ble Judges : N. Tukaramji, J

Bench : Single Bench

Final Decision : Allowed/Dismissed

Judgement

1. Since common issues arise in both the Appeals, they are being disposed of by this common judgment.

2. MACMA.No.30 of 2011 is filed by claimants / petitioners and MACMA.No.627 of 2011 is filed by 2nd and 3rd respondents / APSRTC against the decree and award dt.08.10.2010 passed in MVOP.No.657 of 2008 on the file of the Principal District Judge, Ranga Reddy District, L.B. Nagar, at Hyderabad.

3. For the sake of convenience, the parties herein are referred to as per their array before the Tribunal.

4. The petitioners / claimants herein filed the above MVOP under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.20 lakhs for the death of Sri Varkala Yadagiri in a motor accident dt.30.01.2008.

5. The petitioners / claimants are the parents and the elder brother of Sri Yadagiri / deceased.

6. The case of petitioners / claimants in brief is that on 30.01.2008 when the deceased was proceeding on his cycle towards NTR Nagar, Saroornagar, Raithu Bazar, a bus bearing Registration No.AP-10-Z-4690 of the APSRTC driven by its

driver in a rash and negligent manner hit the bicycle of the Yadagiri / deceased from behind, which resulted in instantaneous death of Sri Yadagiri / deceased slumped and died instantaneously. Thus, the claim petition.

7. The Tribunal after considering the material on record, granted Rs.6,88,000/- with 7.5% per annum and held all the respondents jointly and severally liable to pay compensation.

8. Aggrieved by the same, the appellants / petitioners filed M.A.C.M.A.No.30 of 2011 contending that the Tribunal erred in fixing monthly income of Yadagiri / deceased at Rs.8,000/- per month by ignoring the salary certificates / Exs.A.7 and A.8, and it erred in deducting 50% of the income towards personal expenses and meager amounts are granted towards the conventional heads.

9. On the other hand, the 2nd and 3rd respondents in MACMA.No.627 of 2011 contested that the Tribunal ought not to have held that the accident is caused due to rash and negligent driving of driver of the bus /1st respondent, and should have held that there is contributory negligence on the part of 1st respondent; further the monthly income of the deceased at Rs.8,000/- and the compensation granted is excessive and the amounts granted under the 'conventional heads', is also meager.

10. Now, the point arises for determination is,

(i) Whether the accident occurred due to the rash and negligent driver of the driver of the bus? And

(ii) Whether the compensation awarded to petitioner is just and proper?".

Point (i) :

11. The 2nd and 3rd respondents / APSRTC pleaded that the Tribunal ought to have considered that Sri Yadagiri / deceased was proceeding negligently on his bicycle without observing the traffic. Except this pleading, the respondents could not make out any circumstances, much less any fact in the cross-examination of eye-witness. The eye-witness / PW.2 categorically deposed against the driver of the bus. The police, after due investigation, filed Charge-Sheet / Ex.A.2 against the driver of the bus for rash and negligent driving. It is undisputed fact that the bus hit the cycle of Sri Yadagiri / deceased from behind. Consequently, it shall be held that the evidence placed by petitioners is substantiating the pleaded manner of accident and in the absence of any material, the claim of contributory negligence on the part of Sri Yadagiri / deceased in the accident, shall fail.

Point (ii) :

12. The petitioners claimed that the deceased was aged around 27 years, a bachelor, and was earning Rs.15,000/- per month as Computer Designer of Textiles in a private company, viz., Deep Jyothi Textile Mills. No independent material is filed to prove the age of the Yadagiri / deceased. However, considering the entries in Post-Mortem Report / Ex.A.6, the age of the Yadagiri /

deceased is taken at 27 years.

13. With regard to occupation, the appellants / petitioners filed Original Diploma Certificate in Handloom Technology issued by the Indian Institute of Handloom Technology / Ex.A.11; Original Provisional Certificate issued by Indian Institute of Handloom Technology / Ex.A.10; and got examined one B. Laxminarayana / PW.3, an employee of the Deep Jyothi Textile Mills, who was authorized to depose by the employer, stated that Yadagiri / deceased was working as Textile Computer Designer in the said Mill and was earning around Rs.15,000/- per month. Further, Salary Slips / Exs.A.7 and A.8 for the months of October and November, 2007 shows net salary of Rs.12,420/-and Rs.13,420/-, respectively after deductions. The only objection raised by the 2nd and 3rd respondents is that the author of the Salary Slips / Exs.A.7 and A.8 and the Certificate / Ex.P.11, were not examined. To note the PW.3, during cross-examination, asserted that the Authorization Letter / Ex.A.13 dt.16.07.2010 given by the Factory Management to give evidence in the case and nothing is elicited to doubt the genuineness of pay slips / Exs.A.7 and A.8 and the Certificate / Ex.P.11. Considering these aspects and the qualification and pay slips / Exs.A.7 and A.8, the net monthly salary of Sri Yadagiri / deceased, i.e., Rs.13,420/-, by rounding off to Rs.13,500/-, is taken as monthly income. Duly, the annual income would be (Rs.13,500 x 12) Rs.1,62,000/-.

14. In addition, as per the dictum of National Insurance Company Ltd. vs. Pranay Sethi and others (2017) 16 SCC 860, future prospects of income shall be taken into account while considering the 'Loss of Dependency'. Since Sri Yadagiri / deceased was aged 27 years and was in a job of permanent nature, 50% of annual income shall be added towards future prospects of income, i.e., Rs.81,000/- (50% of Rs.1,62,000/-). Resultantly, the annual income would be Rs.2,43,000/-.

15. In the authority of Sarla Verma & Ors vs. Delhi Transport Corp. & Anr ACJ 2013 Page 1409 the Hon'ble Supreme Court held that where the deceased is a bachelor, 50% of the income shall be deducted towards personal expenditure and the rest would be the contribution of the deceased to the family. Consequently, the annual contribution of the Yadagiri / deceased to appellants / petitioners would be 50% of Rs.2,43,000/-, which is Rs.1,21,500/-.

16. For the relevant age of the Yadagiri / deceased, i.e., 27 years, the multiplicand prescribed in Sarla Verma's case (1 supra) is '17'. If the annual contribution is multiplied with the relevant multliplicand, the resulting figure shall be awarded as compensation under the head 'Loss of Dependency', i.e., Rs.1,21,500 x 17 = Rs.20,65,500/-. Therefore, this amount shall be awarded as compensation to appellants/petitioners towards 'Loss of Dependency'.

17. This apart, as per the Apex Court in the authority of National Insurance Company Ltd. vs. Pranay Sethi and others (2017) 16 SCC 860, the appellants / petitioners are also entitled for compensation under the conventional heads, viz.,

Rs.15,000/- towards 'Loss of Estate'; and Rs.15,000/-towards 'Funeral Charges'.

18. Furthermore, the Hon'ble Supreme Court, reiterating the comprehensive interpretation to 'consortium' given in the authority of Magma General Insurance co. Ltd. vs. Nanu Ram & ors.4, in the decision between United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others5 fortified that the amounts for loss of consortium shall be awarded to the parents as 'filial consortium' for the loss of their grown-up children, to compensate their agony, love and affection, care and companionship of deceased children.

19. Correspondingly, the appellants / petitioner Nos.2 and 3 herein are also entitled for 'filial consortium' of Rs.40,000/- each, totaling to Rs.80,000/-.

20. Thus, in total, the amounts awarded under various heads are as hereunder :

DESCRIPTION

AMOUNT (Rs.)

Loss of Dependency

20,65,500.00

Loss of Estate

15,000.00

Funeral Charges

15,000.00

Filial Consortium to appellant / petitioner nos.1 and 2, i.e., Rs.40,000 x 2 = Rs.80,000/-

80,000.00

TOTAL

21,75,500.00

21. Accordingly, the impugned award is modified and MACMA.No.627 of 2011 is dismissed, and MACMA.No.30 of 2011 is allowed in the following manner :

(i) the respondent Nos.1 and 2 are jointly and severally liable to pay Rs.21,75,500/- with interest @ 7.5% per annum with proportionate costs, from the date of petition till date of realization;

(ii) the apportionment among the appellants/petitioners and the permission to withdrawal shall be in terms of the tribunal award;

(iii) the respondents are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment;

(iv) Court Fee shall be paid on the enhanced compensation amount; and

(v) the amounts paid by the respondents earlier towards the awarded amounts shall be given credit to.

22. As a sequel, miscellaneous petitions, pending if any in these Appeals, shall stand closed.

