(2022) 03 TEL CK 0001

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 1695 Of 2014

Dharavathi Butchi Raju Died And 4 Others APPELLANT

Vs

Bhukya Gopal And 2 Others RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 03 TEL CK 0001

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : Kadaru Prabhakar Rao, Kota Subba Rao

Final Decision : Allowed

Judgement

Being not satisfied with the quantum of compensation awarded in the order and decree, dated 16.09.2006, passed in O.P.No.343 of 2003 on the file of the Motor Accidents Claims Tribunal (I-Additional District Judge) at Khammam (for short “the Tribunal”), the appellants/claimants preferred the present appeal seeking enhancement of the compensation.

The facts, in issue, are as under:

The 1st claimant (since died) filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident. On 02.11.2001 at about 4.15 hours, while he, along with other family members, was proceeding in an Auto bearing No. AP 20 U 1596 in between Mondikunta and Manuguru cross roads, the 1st respondent drove the auto in a rash and negligent manner, due to which the auto turned turtle and the 1st claimant received grievous injury to spinal card, crush injury on nervous system, injury on head and other bleeding injuries all over the body. Basing on a complaint, a case in Crime No.130 of 2001 has been registered against the 1st respondent. The 1st claimant was working as Chairman in S.C. Company Limited and he was drawing a salary of Rs.10,000/- per month. It is also stated that on account of the accident, the body of the 1st claimant became paralyzed, he was unable to move out of his bed, he could not attend his duties since the date of accident and he spent Rs.1,50,000/- towards medical expenses. Therefore, the 1st claimant filed the above O.P. against the respondents 1 to 3, being the driver, owner and insurer of the Auto.

Before the Tribunal, respondents 1 and 2 remained ex parte. The 3rd respondent filed counter denying the involvement of the auto; rash and negligent driving of the 1st respondent; manner in which the accident took place, age, avocation and earnings of the 1st claimant and also the injuries, treatment and disability sustained by the 1st claimant. It is contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

During pendency of the claim-petition, the 1st claimant died and the claimants 2 to 5 were brought on record as legal representatives of the 1st claimant.

After impleading the claimants 2 to 5, the 3rd respondent filed additional counter stating that the claim of the 1st claimant abated since he died and that there is no nexus between the alleged injuries and death of the 1st claimant. There is no record to show that the 1st claimant died on account of alleged injuries and his death took place three years after the alleged incident.

Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether D.Butchi Raju (Paralysed patient) injured in a motor accident occurred on 02.11.2001 due to rash and negligent driving of auto bearing No. AP 20 U 1596 by its driver/R1?

2) Whether the auto bearing No. AP 20 U 1596 is owned by the 2nd respondent and was insured with the 3rd respondent on the date of accident? If so, to what is the quantum of compensation payable to the petitioner by the respondents jointly and severally?

3) To what relief?

After the death of the 1st claimant, the following additional issue has been framed.

“Whether the petitioners 2 to 5 are L.R.s of claim petitioner No.1 and entitled for compensation?”

On behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A16 were marked besides Exs.X1 and X2 through Advocate Commissioner. On behalf of the Insurance Company, R.Ws.1 to 3 were examined and Exs.B1 to B3 were marked.

After analyzing the evidence available on record, the Tribunal held that the accident took place on account of the rash and negligent driving of the 1st respondent and accordingly awarded an amount of Rs.73,560/- as compensation to be paid by the respondents. Challenging the quantum of compensation awarded, the present appeal is filed by claimants.

Learned Counsel for the claimants would submit that the medical record pertaining the 1st claimant i.e., Exs.A3, A5 to A9, Exs.A11, A12 and A-14 to A16 and Ex.X1 clearly established that the 1st claimant sustained serious injuries in the accident occurred on 02.11.2001 and died on 09.10.2004 due to septicemia. He further submits that though the 1st claimant has sustained 100% disability, the Tribunal awarded only a sum of Rs.40,000/-towards disability without considering the age and avocation of the 1st claimant. In view of the settled principles laid down by the Apex Court, the Tribunal ought to have awarded just compensation. Therefore, prayed to enhance the compensation. In support of his contentions, he relied upon the judgment of the Apex Court in The Oriental Insurance Company Limited v. Kahlon @ Jasmail Singh Kahlon (deceased) 2021 AIR (SC) 3913 and Rajesh and others v. Rajbir Singh and others (2013) 9 SCC 54.

Per contra, the learned Counsel for the Insurance Company submits that the quantum of compensation awarded by the Tribunal is based on evidence and the same needs no interference.

The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

The short question that arises for consideration is "whether the compensation awarded by the Tribunal is just and equitable"?

In order to award compensation in case of personal injuries, the Apex Court in Raj Kumar Vs. Ajay Kumar and another MACD 2011 (SC) 33 held as under:

"5. The heads under which compensation is awarded in personal injury cases are the following : Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability. (iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) – involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(b)."

In the light of the principles laid down in the aforementioned case, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment but also for the loss of earning, inability to lead a normal life and enjoy amenities, which would have been enjoyed but for disability caused due to the accident.

A perusal of the material on record would show that admittedly, the 1st claimant sustained injuries in the accident. P.W.3-Doctor, who treated the 1st claimant, in his evidence categorically deposed that the 1st claimant developed traumatic paraplegic i.e., paralysis of both legs, which was supported by Ex.A2-case sheet. P.W.3 further deposed that the 1st claimant having problem of D6 with traumatic paraplegia would be confined to the bed till death and that there is no scope and possibility for recovery. He also deposed that due to the injuries sustained the 1st claimant there is possibility of causing death. The record further discloses that the 1st claimant died on 09.10.2004. P.W.2, who conducted post mortem examination of the deceased (1st claimant), opined that the 1st claimant died due to septicemia shock and that the cause of death was due to combination of old traumatic spinal card injury. Therefore, it is clear from the evidence of P.Ws.2 and 3 that the 1st claimant died due to the injuries sustained by him in a motor vehicle accident. The record also reveals that the interregnum period from the date of accident and till the date of death of the 1st claimant, the 1st claimant had taken voluntary retirement at the age of 52 years i.e., on 01.09.2002. R.W.3 in his evidence categorically deposed that the 1st claimant did not attend to his duty from the date of accident till his voluntary retirement as he confined to bed due to paralysis to his both legs.

In The Oriental Insurance Company Limited v. Kahlon @ Jasmail Singh Kahlon (deceased) (1 supra), the Apex Court in paragraph Nos.18 to 20 observed as under:-

“18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

19. In Pariminder Singh v. New India Assurance Co. Ltd. And others (2019) 7 SCC 217 compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. Again in Kajal v. Jagdish Chand and others (2020) 4 SCC 413 the injured was assessed as 100 percent disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. In view of Raj Kumar (3 supra) there shall be no deduction towards personal expenses.

20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor’s fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.”

In the instant case also, though the 1st claimant had sustained 100% disability, without considering the claim for salary, medical expenses and percentage of disability, the Tribunal had granted a meager amount of Rs.40,000/- towards disability. Admittedly, the 1st claimant died due to the injuries sustained in the accident, which was supported by the oral evidence of P.Ws.2 and 3 coupled with Ex.X1. In view of the judgment of the Apex Court in The Oriental Insurance Company Limited v. Kahlon @ Jasmail Singh Kahlon (deceased) (1 supra), the claimants 2 to 5 are entitled loss of estate which would include expenditure on medicines, treatment, diet, attendant, doctor’s fee etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

R.W.3, in his evidence categorically deposed that at the time of accident, the net salary of the 1st claimant was Rs.5,160/-. If the net salary of the 1st claimant is taken at Rs.5,160/- per month, the annual income would be Rs.61,920/-. As per Ex.X1-Post Mortem Report, the 1st claimant was aged about 53 years at the time of his death. In view of the judgment of Sarla Verma Vs. Delhi Transport Corporation 2009 ACJ 1298, the suitable multiplier to be adopted for calculating the loss of estate of the 1st claimant would be ‘11’. Therefore, the loss of estate would be Rs.61,920/- x 11 = Rs.6,81,120/-. Apart from the above, the claimants

2 to 5 also entitled Rs.13,560/- towards medical expenses; Rs.10,000/-towards attendant charges and Rs.10,000/- towards extra nourishment as awarded by the Tribunal. Thus, in all the claimants 2 to 5 are entitled to a sum of Rs.7,14,680/- as compensation.

At this stage, the learned Counsel for the 2nd respondent/ Insurance company submits that the claimants claimed only a sum of Rs.5,00,000/- as compensation and the quantum of compensation, which is now awarded would go beyond the claim made, which is impermissible under law.

In Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another (2011) 10 SCC 756, the Apex Court while referring to Nagappa Vs. Gurudayal Singh 2003 ACJ 12 (SC) held as under:

“It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident.”

In view of the Judgments of the Apex Court referred to above the claimants are entitled to get more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

Today, the learned Counsel for the appellants/claimants submitted that during the pendency of the appeal, claimant No.5 died on 07.08.2021 leaving behind claimants 2 to 4 as the legal heirs of the deceased and to that effect a Memo has been filed.

In the result, the appeal is allowed and the appellants/ claimants 2 to 4 are entitled to compensation of Rs.7,14,680/-with interest @ 7.5% per annum from the date of petition till the date of realisation. Out of the said amount, the claimant No.2-wife of the deceased (1st claimant) is entitled to Rs.5,14,680/-, claimants 3 and 4 are entitled to Rs.1,00,000/- each. After such deposit, claimants 2 to 4 are permitted to withdraw their respective shares. However, claimants 2 to 4 are directed to pay Deficit Court fee, on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

