
(2010) 11 AP CK 0085

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 561 of 2003

Dora Tuljamma and Others

APPELLANT

Vs

Tanmeet Singh and Another

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2011) 6 RCR(Civil) 2696

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : P.V. Vidyasagar, for the Appellant; I. Maamu Vani, for Oriental Insurance Co. Ltd., for the Respondent

Judgement

B.N. Rao Nalla, J.—The petitioners-claimants in O.P. No. 483 of 1999 on the file of the Additional District Judge, Medak, at Sangareddy, preferred this appeal assailing the order therein dated 24.8.2001 whereby their claim petition was allowed in part granting a total compensation of Rs. 1,11,400/- with proportionate costs and interest at 9% per annum by fastening joint and several liability on the respondents to pay the said compensation amount.

2. The parties herein shall be referred to as they were arrayed in the O.P.

3. The facts in brief are that on 24.3.1999 at about 4.00 p.m. the deceased was proceeding on his scooter to go to Ismailkhanpet. While so, a lorry bearing registration No. HR 38 C 9198 came from opposite side at high speed driven in a rash and negligent manner by its driver and dashed against the scooter, as a result, the deceased fell down and died instantaneously. Sangareddy Rural P.S. registered a case in Crime No. 28 of 1999 u/s 304A IPC.

4. The first respondent is owner of the accident lorry remained exparte. The second respondent -Oriental Insurance Company filed counter denying the claim petition averments including rash and negligent driving on the part of the lorry driver and involvement of the said lorry in the accident. It also denied the

avocation and earnings of the deceased and the dependency of the petitioners and stated that the claim of the petitioners was excessive.

5. Based on the pleadings of both sides, the lower Tribunal framed the relevant issues for consideration as to rash and negligent driving on the part the accident lorry driver and as to the entitlement of the petitioners to claim compensation and the liability of the respondents to pay the said compensation.

6. Petitioner No. 1 who is the wife of the deceased got herself examined as PW.1 besides examining PW.2- manager of a hotel who stated that the deceased was supplying milk in order to show the earnings of the deceased and Exs.A.1 to A.9 were marked. Whereas no witnesses were examined and no documents were marked on behalf of the respondents.

7. Taking into consideration the evidence of PWs 1 and 2 and Exs.A.1-FIR, A.4-charge sheet, A.5-MVI report, the lower Tribunal answered issues in favour of the petitioners and as against the respondents holding that the accident had occurred due to rash and negligent driving on the part of the driver of the lorry wherein the deceased suffered injuries and succumbed thereto and died on the spot and that Ex.A.5- motor vehicle Inspector's report is to the effect that there was no mechanical defect in the vehicle at the time of the accident. The lower Tribunal also considered Ex.A.6-post mortem report in fixing the age of the deceased as 40 years at the time of accident and it also considered Ex.A.7-Pahani and Ex.A.8-certificate issued by the Manager of the Roof Garden Hotel (PW.2) in fixing the monthly income of the deceased at Rs. 1,000/- and contribution to the family was fixed at 600/- per month, annually it came to Rs. 7,200/-and that since the deceased was aged 40 years , appropriate multiplier "12" was applied in determining the loss of dependency at Rs. 86,400/- on account of the death of the deceased. The lower Tribunal also awarded Rs. 15,000/-towards non-pecuniary damages and Rs. 10,000/- towards loss of consortium in favour of the first petitioner-wife of the deceased. Thus the lower Tribunal had awarded a total compensation of Rs. 1,11,400/-.

8. It is the case of the petitioners that the lower Tribunal erred in fixing Rs. 1,000/- as monthly earnings of the deceased; that the lower Tribunal ought to have accepted the evidence of PWs 1 and 2; that PW.1 is none other than the wife of the deceased; that she has testified that the deceased was earning Rs. 3,000/- per month by supplying milk to the hotel of PW.2 as well as carrying on agricultural operations; that she had also filed Ex.A.7-Pahani, according to which, the deceased was owning Ac.1-60 cents of agricultural land; that the evidence of PW.2 also supports the evidence of PW.1 and that PW.2 also issued Ex.A.8 to show that the deceased was supplying milk to his hotel of 15 to 20 litres per day. Therefore, it is contended on behalf of the petitioners that the evidence of PWs 1 and 2 coupled with Exs.A.7 and A.8 goes to show beyond doubt that the deceased was earning Rs. 3,000/- per month. Moreover, it is contended that the respondent-insurance company did not adduce any rebuttal evidence. Therefore, it is contended that the lower Tribunal has committed error in fixing the monthly

earnings of the deceased at Rs. 1,000/- and same has resulted in not awarding just and reasonable compensation to the petitioners.

9. Secondly, it is the case of the petitioners that the lower Tribunal has also erred in not adopting proper multiplier though the deceased was aged 40 years as per Ex.A.6-Post mortem report. However, multiplier "12" was adopted which is not proper one. As per the decision of our Apex court reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the proper multiplier for a person aged between 36 and 40 is "15". Had the Tribunal adopted the said multiplier, it would have come to different conclusion in awarding the compensation towards the loss of dependency to the petitioners on account of the death of the deceased.

10. On the other hand, it is the case of the respondent-insurance company that though it is found in the evidence of PW.2 that the deceased was paid Rs. 3,000/- to Rs. 4,000/- a month for supplying of 15 to 20 litres of milk daily, the deceased was incurring expenditure in procuring the milk and transporting the same to the hotel. If that factor is considered, the income of the deceased from sale of milk would reduce drastically. It is further the case of the respondent-insurance company that though as per Ex.A.7-C.C. of Pahani, the deceased was owning Ac.1.60 cents of agricultural land and the corpus of the said agricultural land remains with the family members of the deceased and what that have lost is only supervisory charges and that the petitioners themselves may supervise the agricultural operations or may engage somebody to do the job and get the same yield or income from the said land. Alternatively, it is submitted that in the absence of proper evidence to prove the income of the deceased, the second schedule to the Motor Vehicles Act may be followed. According to which, in the absence of proof, a notional income of a person may be fixed at Rs. 15,000/- per annum out of which 1/3rd has to be deducted towards personal expenses and the annual loss of dependency would be 10,000/-.

11. It is contended by the petitioners that the deceased was supplying milk of 15 to 20 litres daily to the hotel and he was earning Rs. 3,000/- to Rs. 4,000/- per month, but there is no evidence on record to show that the deceased was owning cattle and from that he was supplying the milk. Further there is no material on record to show that the deceased had agricultural income though Ex.A.7 was filed. In the circumstances, it is just and proper to adopt the procedure as prescribed in the second schedule of the Motor Vehicles Act. As per the second schedule, notional income of the deceased can be fixed at Rs. 15,000/- per annum and if 1/3rd of it deducted towards personal expenses, the annual loss of dependency would be at Rs. 10,000/-. The age of the deceased was fixed at 40 years as per Ex.A.6-post mortem report. As per the decision reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the proper multiplier for a person aged between 36 and 40 is "15". As such, the annual dependency of Rs. 10,000/- has to be multiplied with "15" and the total loss of dependency would be arrived at Rs. 1,50,000/-.

12. Therefore, it is to be held that the petitioners are entitled to a total compensation of Rs. 1,75,000/- (Rupees one lakh seventy five thousand) only (i.e. Rs. 1,50,000/- towards loss of dependency, Rs. 15,000/- towards non-pecuniary damages and Rs. 10,000/- towards loss of consortium) with interest at 7.5% per annum so far as the enhanced compensation is concerned.

13. With the above modification, the C.M.A. is disposed of. No order as to costs.