
(1993) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 1524 and 1315 of 1990

K. Vasantha and Others

APPELLANT

Vs

Gaddipati Appaiah and Another

RESPONDENT

Date of Decision : 03-12-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 147
Penal Code, 1860 (IPC) — Section 304A, 338

Citation : (1994) ACJ 595 : (1994) 1 APLJ 355

Hon'ble Judges : Y. Bhaskar Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Y. Krishna Reddy, for the Appellant; B. Adinarayana Rao and Srinivasa Rao, for the Respondent

Judgement

M.B. Naik, J.—These two miscellaneous appeals arise out of judgment and decree in O.P. No. 437 of 1987, dated 30.6.1990 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge), Guntur, awarding compensation in the sum of Rs. 2,00,000/- to the claimants.

2. C.M.A. No. 1524 of 1990 is filed by the claimants in the said O.P. seeking enhancement of compensation awarded by the Tribunal. C.M.A. No. 1315 of 1990 is filed by the owner of the vehicle (respondent No. 1 in the above O.P.) as against granting of compensation and fixing of liability of payment of Rs. 1,50,000/- on the insurance company (respondent No. 2 in the O.P.) and the remaining amount of Rs. 50,000/- on the owner of the lorry.

3. Since these two appeals arise out of one judgment and decree, they are being disposed of by common judgment.

4. Before the Tribunal, the following amounts were claimed by the claimants:

Rs. (1) Loss of dependency suffered by 1st petitioner, who is wife of the deceased, aged 33 years : 2,00,000/-

- (2) Loss of consortium to petitioner No. 1 : 20,000/-
- (3) Loss of dependency suffered by the 2nd petitioner, who is a minor daughter of the deceased, aged 13 years : 1,75,000/-
- (4) Loss of dependency suffered by the 3rd petitioner, who is a minor daughter of the deceased, aged 10 years : 1,75,000/-
- (5) Mental pain and suffering : 10,000/-
- (6) Cost of medical treatment : 4,000/-
- (7) Funeral expenses : 7,500/-
- (8) Cost of damage caused to TVS Moped 1987 model : 2,000/-
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- | | | | |
|--|-------|---|------------|
| | Total | : | 5,93,500/- |
|--|-------|---|------------|
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5. Claimant No. 1 is the wife of the deceased, aged about 33 years and claimant Nos. 2 and 3 are minor daughters of the deceased, aged about 13 and 10 years as on the date of filing of the O.P. In the petition, it was stated that the deceased Kosaraju Bhanu Prasad was an employee working as a Special Assistant in Corporation Bank, Guntur Branch; that he was drawing a salary of Rs. 3,680/- per month; that he was aged about 37 years on the date of accident; that he was hale and healthy and that he had a further service of around 20 years. It is stated that on 26.9.1987 at about 4.30 p.m., the deceased was proceeding on T.V.S. Moped bearing registration No. ABG 172 along the left side of the road from west to east, i.e., from Vidyanagar SBI Colony towards Hariharamahal via Ring Road in Guntur town, the lorry bearing registration No. APG 1194 owned by the appellant in C.M.A. No. 1315 of 1990 and driven by his employee came from opposite direction in a rash and negligent manner and with high speed and without blowing horn and knocked down the deceased on the wrong side of the road, i.e., northern side of the road. Due to dash, the deceased fell from the moped and received head injury. He was removed to Government General Hospital, Guntur, where he died after a week. The front portion of the moped, including front wheel, headlight, handle bar, etc., was damaged in that collision. It is stated that the accident occurred due to careless driving of the lorry, resulting in the death of the deceased.

6. The Station House Officer, Pattabhi-puram Police Station, registered a case in Crime No. 216 of 1987 u/s 338 of the Indian Penal Code, which was later on converted into an offence falling u/s 304-A of Indian Penal Code. The Motor Vehicles Inspector inspected the lorry involved in the accident and opined that the accident was not due to any mechanical defect. The Medical Officer, who conducted post-mortem examination over the dead body of the deceased, opined that the death was due to head injury. The claimants got issued legal notices to the owner of the lorry and the insurance company seeking compensation. Thereafter, the O.P. was filed claiming compensation of Rs. 5,93,500/- on various counts.

7. On behalf of respondent Nos. 1 and 2 counters were filed before the Tribunal. It was denied by them that the accident took place on account of rash or negligent driving of the lorry. It was stated that due to the negligence on the part of the deceased the accident took place and the claim of Rs. 5,93,500/- was disputed. In the counter filed by the insurance company, it is categorically stated that as far as its liability is concerned, it is only Rs. 1,50,000/- as per the insurance policy and it is not liable to pay any amount over and above the policy amount, if awarded.

8. On the basis of these pleadings, the Tribunal framed six issues including that of issue No. 4, "whether the liability of the 2nd respondent (insurance company) is restricted to Rs. 1,50,000/-.

9. On behalf of the claimants, PWs 1 to 3, including the wife of the deceased, were examined and Exhs. A-1 to A-11 were marked. On behalf of the respondents, no oral evidence was adduced, but Exhs. B-1 and B-2 were marked.

10. Basing on oral and documentary evidence, the Claims Tribunal awarded a compensation of Rs. 2,00,000/- in lump sum with interest at the rate of 12 per cent per annum from the date of petition, i.e., 21.10.1987 till realisation. Out of the said amount of Rs. 2,00,000/- an amount of Rs. 1,00,000/- was allocated to the wife and Rs. 50,000/- each to minor daughters of the deceased. The Tribunal also restricted the liability of the insurance company to the extent of Rs. 1,50,000/- and directed the owner of the lorry to pay the balance of Rs. 50,000/- to the claimants.

11. Mr. Y. Krishna Reddy, the learned counsel for the appellants in C.M.A. No. 1524 of 1990 (claimants), contended that the learned Tribunal has not properly awarded the compensation inasmuch as when the accident took place, the deceased Bhanu Prasad was aged around 38 years; that he was an employee of bank drawing a salary of Rs. 3,680/- per month and that in view of the fact that the deceased had another 20 years for his retirement, as held by the Supreme Court in *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134, half of his pay should have been taken into consideration for determining the award. It is also pointed out that in yet another case, viz., *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation* and another, the Supreme Court has taken into consideration half of the salary of the deceased for determining the compensation; that ignoring these facts the Tribunal has granted a paltry amount of Rs. 2,00,000/- to the claimants and that, therefore, the claimants are entitled to enhanced compensation. Mr. Krishna Reddy further contended that the Tribunal restricting the liability of the insurance company to the extent of Rs. 1,50,000/- is uncalled for inasmuch as the Motor Vehicles Act (Act No. 59 of 1988), which came into force on 1.7.1989, imposes no restriction as far as the liability of the insurance company is concerned.

12. Mr. B. Adinarayana Rao, learned counsel appearing for the appellant in C.M.A. No. 1315 of 1990 (owner of the lorry), contended that fixing of liability to

the extent of Rs. 1,50,000/- on the insurance company and directing the owner of the lorry to pay the remaining amount of Rs. 50,000/- is unwarranted and contrary to insurance policy and that, therefore, the finding on that aspect has to be set aside.

13. Mr. M. Srinivasa Rao, learned counsel appearing for the insurance company, has contended that the Tribunal has taken into account the entire evidentiary value--both oral and documentary--and has rightly awarded a compensation of Rs. 2,00,000/-and, therefore, no interference is called for. Insofar as the liability of the insurance company is concerned, it is contended that in terms of the policy of the lorry, the liability has rightly been restricted to the extent of Rs. 1,50,000/- and there is no reason for upsetting that finding also.

14. In support of his contention, Mr. Krishna Reddy, learned counsel for the claimants, placed before us two decisions of this court in T. Srinivasulu Reddy Vs. C. Govardana Naidu and another, and Dorakonda Venkatrama Seshachalapathi Vs. Vijayawada Co-operative Central Bank, Vijayawada and Another, . He contended that the Division Benches of this court, dealing with Section 92-A of the Motor Vehicles Act, 1939, which was introduced by the Amending Act 47 of 1982 with effect from 1.10.1982, held that the said section has retrospective effect and that if similar analogy is applied to Section 95 of the old Act, which dealt with the liability of the insurance company, the relevant provisions of the new Act u/s 147 could also be extended to the cases where accidents have taken place prior to 1.7.1989.

15. To repel the above contention, learned counsel for the insurance company placed before us the decision of a Full Bench of the Kerala High Court in National Insurance Co. Ltd. Vs. Roy George and Others, . The Full Bench, dealing with the contention as to the retrospective application of Section 147(2)(a) of the Motor Vehicles Act, 1988, which came into force on 1.7.1989, on the question of unlimited liability of the insurance company specified in Section 147 (2) (a), to pending cases where accident had occurred prior to 1.7.1989, held in negative.

16. In view of the Full Bench decision of the Kerala High Court, we are unable to accept the submission made by Mr. Krishna Reddy on this issue. Accordingly, we hold that the unlimited liability of insurance company in terms of Section 147(2) (a) of the Motor Vehicles Act, 1988, which came into force on 1.7.1989, has no retrospective application to pending cases where accident had occurred prior to 1.7.1989.

17. The next question which falls for consideration is what could be the quantum of compensation to which the petitioners are entitled?

18. On behalf of claimants, PWs 1 to 3 were examined. PW 1 is the wife of the deceased, who stated that her husband was 37 years old as on the date of accident and the claimants were solely dependent on him. The salary drawn by the deceased was around Rs. 3,680/- per month. PW 2, who is a bank employee, spoke to the fact that the deceased was getting a salary of Rs. 3,680/-per

month. He also stated that the deceased would have reached the maximum scale had he been alive. Exh. A-10 is the salary certificate issued by the bank authorities indicating the salary being paid to the deceased. PW 3, who is a businessman, is a direct eyewitness to the accident. He stated that the accident took place due to rash and negligent driving of the vehicle by RW 1. In cross-examination, nothing has been elicited to falsify the statement of this witness. On behalf of the respondents, the driver of the vehicle has been examined as RW 1. When an independent eyewitness, who has witnessed the incident, categorically stated that the accident took place due to rash and negligent driving of the vehicle by RW 1, there is no reason to disbelieve his evidence. As held by the Supreme Court in *Manjushri Raha's case* 1977 ACJ 134 and *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, the formula applied therein is that half of the salary has to be taken into consideration for applying the multiplier. It is not disputed that the deceased was drawing a monthly salary of Rs. 3,680/-. It is also not disputed that he was aged roughly 37 or 38 years and that the employees of banks are retired at the age of 60 years. Therefore, the deceased had another 22 years of service. Half of the monthly salary of the deceased works out to Rs. 1,840/-. If this is calculated for 22 years, it would come to Rs. 1,840/- x 12 x 22 = Rs. 4,85,760/-. We are of the view, if multiplier as indicated by the Supreme Court in the above two decisions is applied, the claimants are entitled to a compensation of Rs. 4,85,760/- on all counts.

19. For the foregoing reasons, the judgment and decree of the Claims Tribunal is modified and C.M.A. No. 1524 of 1990 is allowed in part and the claimants are awarded a compensation of Rs. 4,85,760/- (Rupees four lakh eighty-five thousand seven hundred and sixty) only, with proportionate costs in the O.P.

20. Insofar as the apportionment of the amount of compensation is concerned, the Tribunal has directed 50 per cent to be paid to claimant No. 1 (wife) and the other 50 per cent to be paid equally to claimant Nos. 2 and 3 (minor daughters). We also direct the same ratio to be followed in allocating the compensation. The amount awarded to the minor daughters shall be kept in fixed deposit in any nationalized bank till they attain majority and claimant No. 1 (wife of the deceased) is entitled to withdraw the interest accrued thereon once in every three (3) months. We direct the respondents to pay interest at the rate of 12 per cent per annum as ordered by the Tribunal from the date of filing of the petition till realization.

21. Since we have held that the insurance company is liable to pay only to the extent of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only to the claimants, the owner of the lorry (appellant in C.M.A. No. 1315 of 1990) is liable to pay the remaining amount of compensation. Thus, C.M.A. No. 1315 of 1990 filed by the owner of the lorry is dismissed. The amount, if any paid pursuant to the award passed by the Tribunal, shall be given due credit. The parties shall bear their own costs in both the appeals.