(1995) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : C.M.A. No. 1445 of 1992 and Cross-objections

K. Venkateshwar Rao APPELLANT

Vs

Gouru Gouramma and Others RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A, 92A

Citation : (1996) 2 ACC 158 : (1996) 1 ACC 330 : (1996) ACJ 1087 : (1995) 3 ALT 43 : (1995) 2 APLJ 294

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : R. Subhash Reddy, for the Appellant; P.V. Narayana Rao and P.V. Srinivasa Rao for Respondent Nos. 1 to 4 and A. Malathi, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This appeal is preferred by the owner of the vehicle which was involved in the accident resulting in the death of one late Gowru Sriramulu, who was the husband of R-l and father of respondents 2 to 4. R-1 to R-4 filed O.P. 44 of 1988 and O.P.45 of 1988 u/s 110-A and 92-A of the Motor Vehicles Act respectively claiming compensation. The claim of the respondents 1 to 4 was contested by the appellant-owner and the Insurance Company. The learned Trial Judge after appreciation of evidence on record came to the conclusion that the accident took place on account of rash and negligent driving of the vehicle owned by the appellant. Thereafter, the learned Judge proceeded to assess the quantum of compensation payable to the dependants of the deceased. The learned Judge awarded a sum of Rs. 53,316/- towards loss of dependency, Rs. 7,500/- towards loss of expectancy of life and Rs. 7,500/- under the Head ''Pain and Suffering'' and Rs. 5,000./- towards loss of consortium, totalling a sum of Rs. 73,500/-. The owner being aggrieved by the order passed by the Tribunal has preferred this miscellaneous appeal. The claimants-respondents 1 to 4 in this appeal, have also preferred cross-objections seeking enhancement of compensation.

2. Heard the learned Counsel for the appellant and the learned Counsel for the respondents 1 to 4 (Cross-Objectors). The learned Counsel for the appellant-owner attacked the order made by the Tribunal contending that there is no acceptable evidence to support the finding that the driver of the vehicle belonging to the appellant, was guilty of negligent driving and on account of such rash and negligent driving, the accident took place. Secondly, the learned Counsel would submit that the quantum of compensation determined and awarded to the respondents 1 to 4 is on higher side. Elaborating this submission, the learned Counsel submits that the learned Tribunal blindly accepted the age of the deceased to be 35 years in the absence of any supporting material and solely on tine self-serving statement of the wife of the deceased. On the other hand, the learned Counsel appearing for respondents 1 to 4 (Cross-Objectors) would maintain that the Tribunal has seriously erred in law in deducting 50% of the income of the deceased towards personal expenses of the deceased. The learned Counsel would submit that having regard to the facts situation of the case, the Tribunal ought not to have deducted more than 1/3rd of the income of the deceased towards personal expenses of the deceased. The learned Counsel would also submit that the multiplier 14.81 applied by the trial Court is also erroneous and it ought to have been atleast 16 or 17 in view of the law laid down by this Court in Y. Varalakshmi and Others Vs. M. Nageswara Rao and Others, . The learned Counsel further placin greliance on the decision of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and the decision of a Division Bench decision of this Court in A.P.S.R.T.C. Vs. Gali Aruna and Others, would submit that the learned Tribunal ought to have awarded at least Rs. 15,000/-under the Head ''Loss of Consortium'' and a further sum of Rs. 15,000/- under the Head ''Loss of the Estate''. The learned Counsel for the respondents 1 to 4 quite fairly submitted that in view of the law laid down by the Apex Court and this Court, the claimants may not be entitled to the compensation under the heads ''Loss of Expectation of Life'' and ''Pain and Suffering''.

3. Let the Court consider the first argument advanced by the learned Counsel for the appellant. On the issue whether the accident took place due to the negligent and reckless driving by the driver of the Motor Vehicle, an independent and impartial witness by name Tirupathi Rao was examined as P.W.2. In his evidence, P.W.2 has dearly stated that the accident took place on account of rash and negligent driving of the vehicle owned by the appellant. The learned Judge in his judgment has pointed out that as against the evidence of P.W.2 with regard to the manner in which the accident took place, there was absolutely no evidence let in or adduced by the respondents. In that view of the matter, the learned Judge recorded his finding that the accident took place on account of the rash and negligent driving by the driver of the vehicle owned by the appellant. The finding recorded by the learned Trial Judge is based on acceptable evidence and it cannot be said that it suffers from any perversity. It is also not possible to hold that the finding is based on "no evidence". Therefore, I reject the first contention

of the learned Counsel for the appellant. There is also no merit in the second contention of the learned Counsel for the appellant that the compensation awarded to the respondents 1 to 4 is on higher side. The deceased was only an illiterate hamali working in a kirana shop. The wife in her evidence stated that the deceased was 35 years old when he died. Her statement regarding the age was not seriously disputed. Therefore, there is nothing wrong on the part of the Tribunal to take the age of the deceased to be 35 years and on that basis to compute the compensation payable to the dependants. On the other hand, respondents 1 to 4 have made out a strong case for enhancement of the compensation. I do not find any justification for the Tribunal to deduct 50% of the income towards the personal expenses of the deceased. While determining the loss of dependency, the trend of decisions clearly goes to show that not more than 1/3 rd of the total income of the deceased should be deducted towards the personal expenses of such deceased. Even taking that the deceased was earning Rs. 20/- per day or Rs. 600/- p.m., at the most he would have spent only 1/3rd of that amount towards his personal expenses and would have contributed the remaining amount towards his family consisting his wife and the children. In that view of the matter, the yearly contribution to the family would be Rs. 4,800/-. In a similar fact situation, this Court in Y. Varalakshmi v. M. Nageshwara Rao (1 supra) increased the multiplier from 12.79 to 13.79. The Court in para 14 of the judgment observed as follows:

"This point relates to the pecuniary damages awardable to the dependency in the present case. The monthly dependancy to the estate is at Rs. 150/-. Applying the actual multiplier table laid down in Bhagwandas v. Md. Arif (4 supra) the appropriate multiplier for a person aged 40 years at the time of his death in the motor accident will be 12.79. As the deceased in this case is not an employee who is to retire at the age of 60 years, the multiplier mentioned above is to be slightly Increased. The multiplier of 13.79 is accordingly applied. The present value of the future pecuniary loss to the dependency will be 13.79 x 150 x 12, which comes to Rs. 24,822/- and is rounded off as Rs. 24,800/-. This is the loss to the dependancy."

4. In this case also the deceased was not an employee working in any establishment. He was an illiterate person eking out his livelihood by doing the work of hamali in a Kirana shop. The Tribunal has applied the multiplier of 14.81. I think that it is just and proper to apply the multiplier of 16 in view of the law laid down in the afore mentioned decision of this Court. If the multiplier of 16 is applied, the total loss of dependency would come to Rs. 76.800/-.

5. The Apex Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (2 supra) in para 13 of the judgment has observed that the usual award for loss of consortium and loss of estate should be a conventional sum of Rs. 15,000/- each, and accordingly in that case a sum of Rs. 15,000/- was awarded under the head ''Loss of Consortium'' and further a sum of Rs. 15,000/- under the head ''Loss of Estate''. I do not find any justification in the

present case to deny awarding the said sums of money under the aforementioned two heads to the dependants of the deceased. In that view of the matter, Rs. 15,000/- should be awarded to the dependants under the Head ''Loss of Consortium'' and further a sum of Rs. 15,000/- towards ''Loss of Estate''. As already pointed out supra, respondents 1 to 4 are not entitled to any compensation under the heads ''Loss of Expectation of Life'' and "Pain and Suffering".

6. In the result and for the fore-going reasons, I dismiss the C.M.A. with costs and allow the cross-objections.

7. Respondents 1 to 4 are entitled to a total compensation of Rs. 1,06,800/with interest at 12% from the date of the petition till the date of realisation. The order made by the Tribunal stands modified accordingly. As on to-day, respondents 1 and 2 are majors and respondents 3 and 4 remain to be minors. The liability of the Insurance Company as held by the Trial Court is confined to Rs. 50,000/-. The appellant-owner is liable to pay the remaining compensation amount to respondents 1 to 4. Out of the compensation amount, each of the respondents 1 and 2 are entitled to 1/4th of the compensation with proportionate costs and interest. Each of the respondents 3 and 4 are entitled to 1/4th of the compensation with proportionate costs and interest. The shares of respondents 3 and 4 who are minors, shall be invested separately in a nationalised Dank and paid to them as and when they attain majority. Advocate''s fee Rs. 1,000/-.

