(2014) 03 AP CK 0117

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 401 of 2009

Kanakala Rambabu APPELLANT

Vs

A. Vijayalakshmi RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 03 AP CK 0117

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Challa Gunaranjan, Advocate for the Appellant; S.N. Padmini, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Dissatisfied with the quantum of compensation awarded in M.V.O.P. No. 750 of 2001 passed by the Chairman, M.A.C.T.-cum-II Additional District Judge, Visakhapatnam (for short "the Tribunal"), the claimants preferred the instant M.A.C.M.A.

2. The appellants herein are the claimants 1 and 2, who are parents of the deceased--K. Jaya Prakash. The third claimant who is shown as third respondent herein is the brother of the deceased. Respondents 1 and 2 herein are the respondents 1 and 2 before the Tribunal.

3. The factual matrix of the case is thus:

a) The claimants filed MVOP No. 750 of 2001 on the pleadings that the deceased was the driver of auto bearing No. AP 16 U 4532 and on 07.06.2000 at about 15.45 hours when he along with some others was proceeding in his auto and when they reached double road, Isukathota junction in M.V.P. colony, Visakhapatnam, a van bearing No. AP 31 T 133 came in opposite direction and hit the auto causing instantaneous death of the deceased and injuries to other boarders. The claimants pleaded that accident was occurred due to the fault of van driver. They further pleaded that deceased was earning Rs. 500/- per day by driving auto and fending his family and due to his sudden death they became destitutes. On these pleas they filed MVOP No. 750 of 2001 against respondents 1 and 2 who are the owner and insurer of the offending van and claimed compensation of Rs. 5 lakhs as mentioned in the OP.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2/Insurance Company filed counter and opposed the claim denying the material averments made in the claim petition. R2 mainly denied the manner of occurrence of accident as pleaded by the claimants. Its contention is that van driver was not responsible for the accident and the accident was occurred not as pleaded by the claimants. According to R2, the auto was proceeding behind the van and the deceased drove the auto in a rash and negligent manner and at high speed and failed to maintain the distance from the van and unable to control the vehicle he went on and dashed on the rear side of the van. Hence, the accident was caused due to the fault of the deceased alone but not the van driver. On this contention R2 denied its liability. Finally, R2 contended that the claim under different heads is highly excessive and exorbitant.

d) During trial P.Ws. 1 and 2 were examined and Exs. A1 to A6 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of R2.

e) On perusal of the award issue No. 1 is concerned, the Tribunal observed that there are two versions regarding manner of occurrence of accident--one version being that van came from opposite direction and dashed the auto and another version is that auto went behind the van and when the van driver suddenly applied breaks, auto dashed on the rear side. It appears that Tribunal going by FIR and other evidence considered second version was the correct version and held that van driver who applied sudden break in the midst of national highway where there was heavy traffic, was responsible for the accident.

f) Issue No. 2 relating to quantum of compensation is concerned, the Tribunal having regard to the avocation of the deceased as auto driver fixed his monthly income as Rs. 1,500/- and basing on his mother''s age of 49 years, applied multiplier 7.68 following the decision in Bhagwandas v. Mohd. Arif 1987 (2) ALT 137 : 1987 ACJ 1052 and accordingly computed the compensation for the loss of dependency which came to Rs. 92,160/-. The Tribunal observed that third claimant being a major, not a dependent on the income of the deceased and denied him compensation.

Hence, the appeal by claimants.

4. Heard arguments of Sri C. Gunaranjan, learned counsel for appellants and Smt. S.N. Padmini, learned counsel for 2nd respondent/Insurance Company. Case against R.1 was dismissed for default on 15.12.2008. However, since R.1 suffered decree before the Tribunal, his absence in the appeal will not have any difference as per the decision reported in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others 2001 (1) ALT 495. R.3 is not necessary party in

this appeal.

5. a) Criticizing the award, learned counsel for appellants firstly argued that the Tribunal has not granted the compensation under the customary heads such as funeral expenditure and loss of estate and no reason was] mentioned either. Hence the claimants are entitled to compensation in that regard.

b) Secondly, learned counsel argued that the deceased by running auto was earning Rs. 500/- per day and fending his family but the Tribunal took a meager amount of Rs. 1500/-. per month as his earnings and computed the compensation. Therefore, the quantum of compensation was drastically reduced. He submitted that the deceased was a young man of 29 years and running auto in a city like Visakhapatnam and therefore, there was every possibility for him to earn Rs. 500/- per day. In this regard, he further argued that having regard to the age and earning capacity of the deceased, the future earning prospects of the deceased should also to be taken into consideration in fixing his monthly earnings in the light of decision of Hon''ble Supreme Court rendered in the case of Rajesh and others v. Rajbir Singh and others (2013) 9 Supreme Court Cases 54.

c) Thirdly, learned counsel argued that the Tribunal took a low multiplier of 7.68 basing on the age of mother of deceased. He submitted that as per the latest law, the age of the deceased bachelor shall have to be taken for selection of multiplier.

Thus he prayed to allow the appeal and enhance the compensation properly.

6. a) Per contra, learned counsel for R.2 firstly argued that there is no clarity in the pleadings and evidence adduced by the claimants in respect of method and manner of occurrence of the accident. Expatiating it, he submitted that as per pleadings, the accident was occurred when the van came in the opposite direction and hit the auto. Contrary to it, in the evidence P.W. 2 deposed as if the auto was going behind the van and when the van driver applied sudden brakes the auto went and dashed the rear portion of the van and thereby the accident was occurred. He argued that due to inconsistency between the pleadings and evidence, the Tribunal ought to have rejected the case of claimants and ought to have held that the deceased himself was at fault in driving the auto. He further contended that if the evidence is taken into consideration, the auto went and dashed its front van which implies that deceased being the auto driver was responsible for the accident. Therefore, the claimants are not entitled to any compensation.

b) Secondly, he argued that the policy was not in force and so R.2 is not liable for the claim of the claimants.

c) Thirdly, he argued that the Tribunal awarded a reasonable compensation under different heads and there is no need to interfere with the same. He thus prayed to dismiss the appeal.

7. In the light of above divergent arguments, the points for determination in this appeal are:

1) Whether the pleaded accident occurred due to the fault of driver of the van or the deceased himself?

2) Whether the compensation awarded by the Tribunal is just and adequate and needs any enhancement?

8. POINT No. 1: It may be noted that Tribunal having regard to the facts and evidence has observed that the driver of the van had suddenly applied brakes on the National Highway where there was heavy traffic and any driver could understand that if he applies the sudden brakes the vehicle coming on its rear-side would definitely dash his vehicle and in that manner only the accident might have occurred. Thus, the Tribunal had come to an ultimate conclusion that the accident was occurred due to the fault of van driver. The insurance company has not adduced any evidence by examining the van driver before the Tribunal. So also it has not preferred any appeal questioning the above finding of the Tribunal. In these circumstances, it cannot now contend that the deceased being the auto driver was at fault and not the van driver. This point is answered accordingly.

9. Sofaras policy issue is concerned, in Ex. A2--M.V Inspector''s report it was mentioned that policy No. 115466 of National Insurance Company Limited valid upto 14.07.2000 and again it was mentioned that there was no valid Insurance Certificate(I.C). The date of accident was 07.06.2000. Incorporating the same the Tribunal observed that Ex. A2 is not giving clear information. The Tribunal ultimately held that the I.C was valid upto 14.07.2000 and as the accident was occurred on 07.06.2000, it shall be presumed that there was valid insurance by the date of accident. Against this finding no evidence was adduced by the Insurance Company before the Tribunal to give its clarification nor did it file any appeal. Hence, the said contention cannot be accepted now.

10. POINT No. 2: Quantum of compensation is concerned, the first argument of appellants is that no compensation was awarded for funeral expenditure and loss of estate. A perusal of the award confirms this. No reason was mentioned by the Tribunal for not granting compensation under those customary heads. Hence the claimants deserve compensation under those heads. Accordingly, the claimants are awarded Rs. 15,000/- each under those heads.

11. The next argument of appellants is that the Tribunal fixed low income of the deceased at Rs. 1500/- per month though in fact he was earning Rs. 500/- per day. It may be noted that except the oral assertion of P.Ws. 1 and 2, there is no cogent proof regarding earnings of the deceased. Whereas P.W. 1 says, his deceased son used to earn Rs. 500/- per day. P.W. 2 who was also an auto driver says the deceased was earning Rs. 400/- per day. Thus, besides being interested witnesses, there is no consistency in their evidence with regard to the earnings of the deceased. Therefore, having regard to the nature of his occupation a reasonable guess work has to be made regarding his earnings. There is no

demur that the deceased was-cum-driver an auto driver. Ex. A.1-F.I.R reads as if the deceased was the owner of the auto bearing No. AP 16 U 4532. It is obvious that the deceased cannot utilize his entire gross income earned by plying auto for his family. He has to incur the oil and repairing charges etc., from out of his gross earnings. Assuming that during the year 2000, the deceased would have earned Rs. 2500/- per month and had future prospects of Rs. 1,000/- per month, his gross monthly earnings would come to Rs. 3,500/-. After defraying the expenditure, he would contribute a net amount of Rs. 2,000/- only to his family. Therefore, net monthly income of the deceased which is a loss to his family members is taken as Rs. 2,000/-. The annual income of the deceased which will serve the purpose as multiplicand comes to Rs. 24,000/- (Rs. 12,000/- X 12).

12. Now a suitable multiplier has to be selected. A Division Bench of our High Court in a recent decision reported in N. Surender Rao and others v. B. Swamy and another 2014 (1) ALT 512 (D.B.) held that incase of death of a bachelor, his age alone shall be taken into consideration for selection of multiplier but not the age of his dependants. Going by it, the age of the deceased is accepted for selection of multiplier. The age of the deceased was mentioned as 29 years in Exs. A.3 and A.4. Hence the said age is accepted. In the case of Sarla Verma and others v. Delhi Transport Corporation and another (2009) 6 Supreme Court Cases 121, Hon''ble Apex Court provided a multiplier table to be followed. According to it, multiplier ''17'' is provided for the deceased in the age group of 26-30 years. So by multiplying the annual income of the deceased i.e. Rs. 24,000/- with multiplier ''17'', we will arrive the total earnings of the deceased at Rs. 4,08,000/-. Again following the Sarla Verma''s case(5 Supra) 50% of the said amount is deducted towards personal expenditure of the deceased and balance amount of Rs. 2,04,000/- is awarded as compensation to the claimants towards loss of dependency.

13. Thus, the total compensation payable to the claimants under different heads can be detailed as below:

So the compensation is enhanced by Rs. 1,41,840/- (Rs. 2,34,000/- minus Rs. 92,160/-).

14. In the result, this appeal is partly allowed and ordered as follows:

a) The compensation is enhanced by Rs. 1,41,840/- with proportionate costs. The enhanced compensation amount shall carry interest at 7.5% p.a. from the date of O.P till the date of realization.

b) The respondents are directed to deposit the enhanced compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.

c) No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

