(2013) 12 AP CK 0025

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 73 of 2011

Kancham Nallappa (Died) per L.Rs. Kancham Ramalinga and Others	APPELLANT
Vs	
B. Sudhakar and Another	RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2013) 12 AP CK 0025

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : K. Maheswar Rao, for the Appellant; K. Srinivas and Mr. I. Mamu Vani, for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—This appeal is filed by the claimants, having been aggrieved by the order of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Anantapur, (for short, ''the Tribunal''), dated 16.09.2010, in O.P. No. 377 of 2008, awarding compensation of Rs. 80,000/- against tractor owner, as against the claim of Rs. 4,00,000/- with joint liability of owner and insurer for enhancement of compensation and for joint liability on insurer also, as prayed for, in the claim petition filed under Sections 140 and 163A of the Motor Vehicles Act, 1988 (for short, ''the Act''). The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

Initially, the claim petition was filed by K. Nallappa, when he was alive, claiming compensation of Rs. 4,00,000/- along with interest against the respondents for the injuries received by him in the motor vehicle accident, which took place on 17.07.2005. Claimants 1 and 2 are the wife and mother of the deceased. On 17.07.2005 at 5.00 P.M., when the deceased was standing by road side near Penna River of Tarimala Village Fields of Singanamala Mandal, the Tractor-cum-Trailer bearing Nos. AP 02-U-7474 and 7472, belonging to the 1st respondent and insured with the 2nd respondent, being driven in a rash and negligent manner, dashed him, due to which, the deceased sustained grievous injuries over his body; immediately he was shifted to Government General Hospital, Anantapur, and from there to Government General Hospital, Kurnool and again to the Heart and Brain Center, Kurnool, for treatment; the police of Singanamala Police Station registered the accident as a case in Cr. No. 54 of 2007 against the driver of the offending vehicle for the offence punishable u/s 338 I.P.C.; the deceased could not gain his normal health, though he spend more than Rs. 1,00,000/- towards medical expenses and other expenses and ultimately he sustained permanent disability resulting loss of his earnings of Rs. 3,000/- per month, as he is an agriculturist and coolie.

2. The 1st respondent filed his counter contending that the 2nd respondent has to indemnify him in the event of any liability as his offending vehicle was duly insured with the 2nd respondent.

3. The 2nd respondent also filed its counter alleging that the accident in question took place not due to rash and negligent driving of the offending vehicle by its driver; its liability in indemnifying the 1st respondent would be subject to the terms and conditions of the policy only if at all such policy was in existence by the date of accident; the deceased was traveling in the offending vehicle as a passenger; such offending vehicle was being used for commercial purpose, though it was insured for agricultural purpose by the date of accident and the quantum of compensation claimed by the deceased is excessive.

4. The Tribunal framed the following issues for its consideration:

1. Whether the accident occurred due to rash and negligent act of the driver of tractor and trailer bearing Nos. AP-02-U-7471 and 7472 and caused injuries to petitioner or not?

2. Whether the petitioner is entitled to claim any compensation? If so, to what amount from which of the respondent?

3. To what relief?

5. As the injured claimant died during pendency of the proceedings of the claim petition, the petitioners, who are his parents, came on record as his legal heirs.

6. On behalf of the petitioners, the father of the deceased was examined as PW. 1 and one witness as PW. 2 and marked Exs. A1 to A8. The insurance company-the 2nd respondent herein, examined its Development Officer, Anantapur, as RW. 1 and marked Exs. B1 and B2 and the 1st respondent-owner of the vehicle, did not adduce any oral or documentary evidence on his behalf.

7. The Tribunal, after taking into consideration the evidence available on record and treating that the accident occurred due to rash and negligent driving of the driver of the vehicle, awarded compensation of Rs. 80,000/- to the claimants. Dissatisfied with the award passed by the Tribunal as against the claim of Rs.

4,00,000/-, the claimants preferred the present appeal seeking enhancement of the compensation.

8. Learned counsel for the claimants contended that the Tribunal held liability against the 1st respondent-owner of the crime Tractor and Trailer bearing No. AP-02U-7471 and 7472, with no liability on the 2nd respondent-insurer; the driver of the vehicle was not having transport licence, much less no licence even from the date of accident on 17.07.2005; whereas the licence obtained was w.e.f. 18.07.2006; the award passed by the Tribunal is contrary to law and went wrong in not fixing the joint and several liability along with the insurer and, hence, prayed to allow the claim as prayed for.

9. On the other hand, learned counsel for the 1st respondent insured-cum-owner of the vehicle, also supported the contention of the claimants that the Tribunal ought to have made the insurer also liable along with the insured as regards the joint and several liability.

10. The contention of the 2nd respondent-insurer of the crime vehicle is that the driver of the vehicle was not having the transport licence, much less any licence even from the date of accident on 17.07.2005; whereas the licence obtained was w.e.f. 18.07.2006 and hence, the award passed by the Tribunal is correct and prayed to dismiss the appeal.

11. Now the points arise for consideration in this appeal are:

(i) Whether the compensation awarded by the Tribunal of Rs. 80,000/- out of the claim of Rs. 4,00,000/- is unjust and utterly low to enhance and, if so, to what amount with what rate of interest?

(ii) Whether the 2nd respondent-insurer is liable to indemnify the 1st respondent-owner of the vehicle and the exoneration of insurer by the Tribunal is unjust and, if so, with what observations?

(i) To what result?

12. POINTS:-A perusal of the claim petition at para 26 averments shows the date of accident as 17.07.2007, but not as 17.07.2005. Exs. A1 to A3, which are copy of First Information Report, wound certificate and charge sheet, also show that the accident was occurred on 17.07.2007. Thus, the Tribunal is erred in saying the accident was dated 17.07.2005, instead saying 17.07.2007. As per Ex. B2, copy of driving licence extract, and RW. 1 evidence with reference to it, the driver of the vehicle was having driving licence to drive light motor non-transport vehicle from 18.07.2006 to 01.05.2019. Therefore, it is clear that as on the date of the accident, the driver of the vehicle was having L.M.V. non-transport. There is nothing to say that the vehicle is L.M.V. transport in commercial use by summoning records from RTA. Thus, it can be said that as on the date of the accident, the driver of the vehicle though not obtained transport licence, when there is nothing to say that the transportation of sand is part of any commercial and non-agricultural purpose, the Tribunal went wrong in holding that the insurer

is not liable, instead of fixing joint liability on the insurer and the insured. The next aspect to decide is quantum of compensation with rate of interest.

13. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965(1) A11. E.R 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what compensation would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in Charle red House Credit v. Tolly 1963 (2) All.E.R. 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in Parry v. Cleaver 1969(1) All.E.R. 555 observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

14. To decide whether the insurer can be exonerated from the liability to indemnify the insured to the third party claimants concerned, this Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, The New India Assurance Company Limited Vs. G. Sampoorna and Others, S. Iyyapan Vs. United India Insurance Company Ltd. and Another, held that the insurer is not

liable to indemnify the owner, when the driver has no licence to drive the crime vehicle as on the date of accident.

15. Coming to the factual matrix, a perusal of paragraph 8 of the amended claim petition, since the injured died on 04.10.2008, as per Exs. A5 and A4, about one year three months after the accident dated 17.07.2007. As per Ex. A4, post mortem report, the death was due to septicemia and as per Ex. A6, altered memo filed by the police, it is crystal clear that the death was not due to any of the injuries sustained by the deceased in the accident referred in Ex. A1. As such in the absence of any medical evidence, what was if at all formed any opinion by the mediators to the inquest, it is only a hearsay and inadmissible evidence. A perusal of Ex. A7, bunch of medical bills for a sum of Rs. 53,515/-, as also referred in para 13 of the judgment of the trial Court, the treatment undergone by said injured was originally at Government General Hospital, Anantapur, and subsequently at Government General Hospital, Kurnool, and in Heart and Brain Center, Kurnool, where he was treated as inpatient from 21.07.2007 to 04.08.2007 before his death on 04.10.2008. As per Ex. A2, wound certificate, he sustained laceration over his right lumbar region and one grievous injury of fracture to his tenth rib on the left side of his chest on account of the accident in question and the photos, which are three in number enclosed to Ex. A1 F.I.R., show there was injury with unhealed wound on the right lumbar region. However, there is nothing on record to show, as concluded above, that the death was the result of the said wound, but there is nothing to so conclude as to cause of death arrived at in post mortem report referred to above. No doubt, from the legal maxim action personals mortar cum persona to mean personal injuries claim dies with the person, there can be no compensation that can be claimed for the injuries, including for pain and sufferance, but for loss of estate suffered by the claimants, who are the parents of the injured, including transport expenses, medical expenses and treatment.

16. In this regard, the Tribunal awarded in all Rs. 80,000/- as compensation to the claimants. As referred to above from Ex. A7, bunch of medical bills, the trial Court went wrong in not considering the same, particularly because the Doctor, who treated the deceased, was not examined in proof of the said medical bills. The trial Court should have taken into consideration the medical evidence, when there is nothing to show that they are wrong or fake bills. Thus, said medical expenses of Rs. 53,515/- requires to be considered as loss of estate, apart from treatment in the Ananapur Government Hospital and from shifting to Government Hospital, Kurnool, and from there to the Heart and Brain Centre, Kurnool, and there from to the residence of the claimants; the transport charges required to be incurred even during the year 2007-2008 can be estimated at Rs. 10,000/- and for attendant charges and loss of earnings to the extent of contribution to the family for said period, estimated at Rs. 16,485/-, which comes to Rs. 80,000/- as awarded by the Tribunal and practically for this Court there is nothing more to enhance, but for to say the insured and insurer are jointly liable. Accordingly, the appeal is partly allowed, while confirming the

amount of compensation awarded by the Tribunal at Rs. 80,000/- with interest at 71/2% per annum from the date of petition, till the date of realization, by fixing the liability jointly and severally on the 2nd respondent-insurer and the 1st respondent-owner of the vehicle in directing them to deposit the compensation sum within one month, failing which for the claimants to execute and recover. On such deposit or execution and recovery, the claimants are permitted to withdraw the said amount, being equally entitled. There is no order as to costs of the appeal.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

