

(2004) 12 AP CK 0119
In the Andhra Pradesh High Court
Case No : C.M.A. No. 4187 of 2004

Karveti Rathnamma and Others

APPELLANT

Vs

New Sunbulk Carriers and Another

RESPONDENT

Date of Decision : 31-12-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) ACJ 614 : (2005) 2 ALD 540 : (2005) 2 ALT 122

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : V. Bhaskara Reddy, for the Appellant; D. Kodandarami Reddy and I. Mammu Vani, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. This Civil Miscellaneous Appeal is directed against the order and decree, dated 27-06-2003, passed by the Motor Accident Claims Tribunal-cum-District Judge at Cuddapah (for brevity "the Tribunal), allowing M.V.O.P.No. 609 of 2000 in part, filed u/s 166 of the Motor Vehicles Act claiming a compensation of Rs. 1,50,000/- for the death of the deceased by name Karreti Lakshmidevi in a road accident on 24-04-2000.

3. The appellants are the claimants, the first respondent is the owner of the Tanker bearing No. MH. 04-8671 and the second respondent is the Insurance Company.

4. For the sake of convenience, the appellants, the first respondent and the second respondents will be referred to as "the claimants, the owner of the Tanker and the Insurance Company" respectively.

5. The case of the claimants, in brief, is that on 24-04-2000 at about 10.30 a.m., when the deceased was going along with her father on a two wheeler bearing

Registration No. AP.04-5093, and when they reached near Kethireddigari Palli on Rayachoty-Kalakada road, the Tanker belonging to the owner and insured with the Insurance Company came in opposite direction at high speed and in a rash and negligent manner and hit the two wheeler causing instantaneous death of the deceased girl. The deceased was studying 9th class by the time of accident.

6. The Insurance Company filed counter denying the averments in the claim petition and contending that in any event the quantum of compensation claimed is highly excessive and exorbitant.

7. The owner of the Tanker remained ex parte before the Tribunal.

8. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the deceased Karreti Lakshmidēvi died in a motor vehicle accident on 24-04-2000 due to rash and negligent driving of R-1 's tanker bearing number MH. 04-8671 by its driver?

(2) Whether the petitioners are entitled for compensation and if so to what amount and from whom?

(3) To what relief?

9. In support of the case of the claimants, the first claimant, who is the mother of the deceased, examined herself as P.W. 1 and another as P.W. 2 and got marked Exs. A-1 to A-4 on their behalf. On behalf of the Insurance Company, no oral or documentary evidence has been adduced.

10. The tribunal after considering the facts and circumstances and the entire evidence, both oral and documentary, having held on issue No. 1 that due to rash and negligence on the part of the driver of the tanker owner the accident had occurred and on issue No. 2 that the claimants are entitled to a compensation of Rs. 67,000/-, granted a compensation of Rs. 67,000/- in all, under all the heads, fastening the liability on the owner as well as the Insurance Company to pay the said compensation to the claimants. Feeling aggrieved with the same, the present Civil Miscellaneous Appeal has been preferred.

11. The learned counsel for the claimants submits that the impugned award of the Tribunal is liable to be set aside inasmuch as the Tribunal has awarded a meagre amount towards compensation. He relies on the decisions of the Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, , Shanti Bai and Others Vs. Charan Singh and Others, and Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, , the decision of the High Court of Madhya Pradesh, Indore Bench in Devilal and Another Vs. Sidhanath through L.Rs. Ramakant and Others, the decisions of the High Court of Karnataka at Bangalore in North West Karnataka Road Transport Corporation Central Office and Others Vs. Kariyappa and Others, ; K. Nanjappa and Another Vs. V. Sekar and Another, , Smt. Puttamma and Another Vs. D.V. Krishnappa and Another, , and Chinna Dorai and another Vs. The Managing Director, Karnataka State Road Transport

Corporation, Bangalore, , the decision of the High Court of Madras in State Express Transport Corporation Vs. Ponnusamy, Ananthu, Ramesh, Nagambika Bulk Careers and The New India Assurance Company Ltd., the decision of the High Court of Rajasthan in Badri and Ors. v. Surendra Kumar and Ors. 111 (2002) ACC 714 (Raj.) the decision of the High Court of Rajasthan, Jaipur Bench in Shyam Lal and Others Vs. Rajendra Kumar and Others, and the decision of this Court in United India Insurance Co. Ltd. v. Chava Venkateswara Rao @ Venkateswarlu and Ors. 2003 (2) An.W.R. 190 (A.P.).

12. The learned Standing Counsel appearing on behalf of the Insurance Company submits that the impugned award passed by the Tribunal needs no interference by this Court inasmuch as the same is just and reasonable. He relies on the decision of this Court in Andhra Pradesh State Road Trans. Corporation v. G. Ramanaiah 1988 ACJ 223 (A.P.) and Nenavath Basu and Another Vs. Smt. Ch. Seetha and Others, .

13. In Andhra Pradesh State Road Trans. Corporation v. G. Ramanaiah 1988 ACJ 223 (A.P.), Sri Justice Jagannadha Rao (as he then was) elaborately dealt with the assessment of compensation for the children, aged parents and different categories, including fatal cases and injuries.

14. It was further held by this Court in A.P.S.R.T.C. v. Ramanaiah 1997 (3) ALT 526 that it would not be possible to ascertain a suitable multiplier and so a conventional amount which may range up to Rs. 15,000/- can be awarded in accidents that took place in late seventies and in such cases since the deceased was within the age group of 5 to 10 years, the minimum compensation that could be paid was Rs. 50,000/-, after the 1994 amendment, which would be reasonable.

15. From the decisions (1 to 12 supra) relied upon by the learned counsel for the claimants, the consistent view expressed in all those judgments notwithstanding variance in the facts and circumstances was that it would be very difficult to assess the earning capacity of the children irrespective of the sex who died in the accident belonging to the age group of 5 to 10 years.

16. Therefore, it would only be conventional figure of Rs. 50,000/-, normally, that can be awarded as compensation, on logical guessing as there could be no standard formula.

17. Further, from the decision in North West Karnataka Road Trans. Corporation v. Kariyappa (5 supra), relied upon by the claimants, it could be seen that while following the decision in General Manager, Karnataka State Road Trans. Corporation v. Yellappa Dharmoji Kittur (1988 ACJ 556 (Karnataka), the observations made by the Karnataka High Court, which attract my attention as impressive, are as under:

"It is impossible to estimate the magnitude of the calamity that has befallen the parents. All the bright colours of their life are etched away by this tragedy. Death

has such an inexorably quality that in estimating its consequences, one can do more than recognize the total ineptitude of any logical process on which estimates are based. Death is a negation of the logic of the living.

No amount of money can bring back to the hapless parents their dead son. It takes quite some time for the intensity and the utter finality of this loss of fully dawn on them. Law provides reparation only in the manner known to it, namely, making a representation in financial terms. Niceties of calculation help us up to a point. But certainty arithmetic fails to provide a solution which common sense demands. It is in this area that a judge realizes the impossibility of comparing life with nothingness or non-existence implicit in death. As one judge asked, in a different context, "how could a Judge compare his experience of life and set it against his ignorance of death"?"

18. Similar is the view expressed by various High Courts in various circumstances.

19. In the case of *Lata Wadhwa v. State of Bihar* (1 supra), it was observed by the apex Court that at the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law.

20. In the said case, similar is the view expressed by Mr. Nariman, the learned Senior Counsel who appeared on behalf of Tata Iron and Steel Company (TISCO), that loss of a child to the parents is irrecompable, and no amount of money could compensate the parents and further that having regard to the environment from which those children were brought, their parents being reasonably well placed officials of the Company. Basing on the said view expressed by he learned Senior Counsel appearing on behalf of the TISCO, the compensation amount was enhanced three times for the children between the age group of 5 to 10 years in addition to the conventional figure of Rs. 50,000/-.

21. From the said decision (1 supra), it could be seen that it is the view of the apex Court that while assessing the just compensation in cases of children between the age group of 5 to 10 years, the status of the parents and other surrounding circumstances like the studies of the children etc., have got to be taken into account.

22. Coming to the present case, it is not in dispute that the deceased girl was aged 9 years as on the date of accident and there was no negligence on the part of the driver of the two-wheeler, driven by her father. Though the contention was raised that the deceased was a brilliant student, as recorded by the Tribunal, no evidence was adduced in that regard.

23. However, it was an admitted fact that the deceased girl was travelling along with her father as a pillion rider on a two-wheeler when the accident took place. This aspect suggests that the parents of the child was reasonably and decently placed in the society though not very high or very well. Further, the deceased girl

was studying 4th class. Though there was no evidence on record to the effect that the deceased girl was a brilliant student, I am of the view that brilliance of a child, in all cases, cannot be assessed or estimated at the age of 9 years, particularly when the child was undergoing elementary education. In most of the cases, basing on the background of the family, the surroundings, and brought up of the child, though of a mild appearance, can reasonably be expected to gain a good standard in future and make a mark. This may not be possible in all the cases but certainly is possible in many cases.

24. Therefore, non-proof of the brilliance of the deceased girl, in the present case, cannot be a ground to reject the claim of the claimants.

25. Further, a girl of around the age of 10 years may also serve the parents in cases of small necessities. Love and affection of a female child towards the parents and vice-versa cannot be less estimated when compared to a male child. The dependence of the parents, at the fag end of their life, on the female child, in the present day's context, would also be equal to that of a male child.

26. Therefore, for the foregoing reasons and having regard to the fact that the parents were of a reasonable and decent status in the society, it can safely be inferred that the loss of dependency and the reasonable expectation of the parents, in the present facts and circumstances, can certainly be higher than what was estimated by the Tribunal.

27. Therefore, the minimum contribution estimated by the Tribunal, in my considered view, can be enhanced reasonably, in addition to the amount of Rs. 67,000/-, which was already granted by the Tribunal.

28. Accordingly, I feel it just and reasonable to enhance the amount of compensation from Rs. 67,000/-, which was awarded by the Tribunal, to Rs. 1,00,000/- (Rupees One Lakh Only) in all, under all the heads.

29. In the result, the Civil Miscellaneous Appeal is allowed in part, at the stage of admission, to the extent indicated above. However there shall be no order as to costs.