
(2004) 06 AP CK 0039

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1889 of 2000

Kompelli Venkataiah and Others

APPELLANT

Vs

Mohd. Afzal Miya and Others

RESPONDENT

Date of Decision : 17-06-2004

Acts Referred:

Hindu Succession Act, 1956 — Section 8, 9

Citation : (2004) 5 ALD 397

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Srihari, for the Appellant; G. Ranapratap and B. Basavaraj, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Appellants who are the father, sisters and brothers of K. Mahender (the deceased) filed a claim petition seeking compensation of Rs.4,00,000/- alleging that when the deceased and others were proceeding in an auto bearing No.AP-36-T-9935 belonging to the second respondent and insured with the third respondent, being driven by the first respondent in a rash and negligent manner, it met with an accident resulting in the death of the deceased. Respondents 1 and 2 chose to remain ex parte before the Tribunal and in this Court. Third respondent filed a counter. In support of their case, appellants examined P.Ws.1 to 3 and marked Exs.A.1 to A.20. No oral evidence was adduced on behalf of the respondents but Exs.B.1 and B.2 were marked by consent on its behalf. The Tribunal having held that the accident occurred due to the rash and negligent driving of the auto, passed an award for Rs.3,27,500/- in favour of the appellants against the respondents. Dissatisfied with the compensation awarded to them, appellants preferred this appeal.

2. The point for consideration is to what compensation are the appellants entitled to?

3. Since the appellants i.e. claimants, are the father, brothers and sisters of the deceased, the age of the first appellant, but not the age of the deceased, that is relevant for fixing the relevant multiplier, because petitioners 2 to 8 are not the legal heirs to the estate of the deceased, and first appellant alone is the heir to his estate as per schedule to Hindu Succession Act, 1956 (the Act), read with Section 8 of the Act, as father is in the first entry and brothers and sisters are in the second entry in Class II heirs shown in the schedule to the Act and since as per Section 9 of the Act, the first entry in Class II heirs shall be preferred to those in the second entry. That apart appellants 2 to 8 cannot also be said to be dependants on the earnings of the deceased, because the full cause title of the claim petition shows that appellants 2 to 5 are married sisters of the deceased and so they would be maintained by their respective husbands but not by the deceased. As far as appellants 6 to 8 are concerned they are described as tailors and so it is clear that they are eking out their own livelihood by tailoring and so they cannot be said to be dependants on the deceased.

4. First appellant described himself as a person aged 60 years in the claim petition. Assuming that the age of the first appellant mentioned in the claim petition is true, in view of his age, the multiplier would be less than one. So, even assuming that the finding of the Tribunal that the deceased was contributing Rs.2,000/- per month to the appellants for their maintenance is true, his annual contribution to the appellants would be Rs.24,000/- and adding non-pecuniary damages thereof, appellants, say first appellant only, would have been entitled to about Rs.50,000/- as compensation. Even if multiplier in schedule II of the Motor Vehicles Act, 1988 (the Act), is taken into consideration the multiplier would be "5" and so the compensation payable, including non-pecuniary damages, would be about Rs.1,50,000/-. So, the compensation of Rs.3,27,500/- awarded by the Tribunal by fixing the multiplier by taking the age of the deceased into consideration is to say the least, a windfall on the appellants. The Tribunal failed to keep in view the fact that the deceased, had he been alive, would have got married and begotten children and so he would not be contributing the same amount which he might be contributing to his father and non-dependant brothers and sisters, after he got married.

Ex facie the finding of the Tribunal that the contribution of the deceased to the appellants is Rs.2,000/- per month is erroneous. Had the third respondent obtained permission u/s 170 of the Act and preferred an appeal, or cross objections, the compensation awarded by the Tribunal would have been reduced to half. So, the claim in the appeal cannot but be said to be avericious and meritless.

5. Hence, the appeal is dismissed with costs.