(1995) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : C.M.A. No. 112 of 1994

K.S. Sudhakaran and Others — APPELLANT

Vs

V.S. Narasimha Reddy and Others — RESPONDENT

Date of Decision : 13-11-1995

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (1996) 2 ACC 205 : (1995) 3 ALT 673

Hon'ble Judges : Motilal B. Naik, J;A. Gopal Rao, J

Bench : Division Bench

Advocate : K. Venkata Ramaiah, for the Appellant; Ashok Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—This civil miscellaneous appeal is directed against the judgment and decree in O.P. No. 52 of 1992 on the file of the Additional Chief Judge, City Civil Court, Secunderabad.

2. The appellants are the claimants in O.P. No. 52 of 1992. The appellant No. 1 is the husband of late Stella Shantha Kumari. Appellant Nos. 2 and 3 are the minor son and minor daughter born out of the wedlock between the appellant No. 1 and late Stella Shantha Kumari.

3. It is the case of the appellants that the deceased Stella Shantha Kumari was working as a teacher in Bharatiya Vidya Bhavan, Basheerabagh, Hyderabad. On the date of the accident, she was drawing a monthly salary of Rs. 2,500/-, aged about 39 years and was quite hale and hearty. It is further stated that the deceased was coming from Begumpet Police Lines to Secunderabad Railway Station on a scooter bearing No. AHU 5516 along with her husband, the appellant No. 1 herein, around 6.40 p.m. After crossing Paradis X Roads, an autorickshaw bearing No. AP-1 I-T-578 belonging to the respondent No. 1 driven by the respondent No. 2 came with high speed and dashed the rear side of the

scooter and sped away. As a result of which, appellant No. 1 and the deceased fell down on the road. The deceased sustained head injury while the appellant No. 1 received minor injuries and were later on shifted to hospital. The hospital authorities declared that said Stella Shantha Kumari succumbed to the injuries while she was undergoing treatment.

4. On account of the death of Stella Shantha Kumari due to rash and negligent driving of the vehicle by respondent No. 2 which belongs to the respondent No. 1, the appellant No. 1 being the husband of late Stella Shantha Kumari and appellant Nos. 2 and 3 being minor son and daughter, laid a claim seeking compensation for an amount of Rs. 8,10,000/- u/s 166 of the Motor Vehicles Act, 1988.

5. The claim petition was, however, opposed by respondent No. 3, inter alia, contending that the vehicle in question was not insured with the insurance company, respondent No. 3. It is also contended that the accident is not attributable to the respondent Nos. 1 and 2 alone as there was a contributory negligence on the part of the appellant No. 1 also who was driving the scooter.

6. In order to sustain their claim, the claimants led evidence by examining PWs. 1 to 4 and got marked Exhs. A-1 to A-9. On behalf of the respondents neither any oral evidence was adduced nor any documents were marked before the Tribunal.

7. On the basis of the oral and documentary evidence filed by the claimants, the Tribunal awarded an amount of Rs. 2,20,000/- with 12 per cent interest from the date of filing of the petition, i.e., 12.3.1992 along with costs while taking 13 as relevant multiplier. As against the award of the said amount, the present civil miscellaneous appeal is filed by the claimants.

8. Mr. K. Venkata Ramaiah, learned Counsel appearing on behalf of the claimants has primarily contended before us that awarding of compensation basing on the multiplier of 13 is improper, inasmuch as the age of the deceased at the time of accident was only 39 years. It is further contended that in all probability, the multiplier should have been 21 as the deceased was working as teacher and she would have retired after attaining the age of 60 years, and, therefore, 21 is the appropriate multiplier. Mr. Venkata Ramaiah, in support of his contention, has taken us to a decision in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, . Placing reliance on the above decision, it is stated by Mr. Venkata Ramaiah that the appropriate multiplier should have been applied taking into account the proximity of the age of the deceased. He, therefore, seeks modification of the award while applying 21 as relevant multiplier. It is also contended that the Tribunal has wrongly deducted Rs. 1,200/- towards personal expenses of the deceased. In all probability, such deduction shall be 1/3rd from the salary of the deceased which shall be around Rs. 830/- per month. Mr. Venkata Ramaiah has further urged before us that the Tribunal has failed to award just compensation.

9. The learned Counsel for respondent No. 3, insurance company, on the contrary has stated that the multiplier as applied by the Tribunal is well accepted by the courts including the Supreme Court and there cannot be any change in the multiplier applied by the Tribunal.

10. We have heard both the counsel at length. It is true that the deceased being a teacher probably would have retired at the age of 60 years. It is equally true that the deceased Stella Shantha Kumari was working as a teacher and was earning Rs. 2,500/- per month and was aged about 39 years as on the date of the accident. The intention of the legislature in making room for awarding compensation under the Motor Vehicles Act is to render suitable assistance to the immediate dependent members of the family on the death of the sole bread earner. Intention, we understand, is very clear, to render appropriate assistance to the helpless family members who are desperately looking forward for some assistance at the stage where the life of their bread earner is taken away on account of the accident. The courts have adopted some device for awarding just and reasonable compensation. In the absence of any proper mechanism, a probable procedure has to be followed, which is known as the ''multiplier method''. This method has now well been accepted by the Supreme Court also as is evident from the latest decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

11. The endeavour of Mr. K. Venkata Ramaiah, counsel for the appellants is that the award of compensation shall be in accordance with the decision of the Apex Court in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, and shall not be in accordance with multiplier method. He further stated that the Tribunals have to grant appropriate compensation taking into account the age of the person at the time of accident and his/her retirement age. This aspect, in our view, has also been considered by the Supreme Court in the decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . The Supreme Court in the said decision has made the following observation:

We are aware that some decisions of High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation.

We are clear in our minds as to the provisions of Section 166 of the Motor Vehicles Act which enables the Tribunals to award just and reasonable compensation. In the absence of any scientific method, the generally accepted multiplier method, in our view, is appropriate while granting compensation. The compensation awarded is in lump sum. This lump sum amount if invested properly, will fetch dividend/interest. With the interest received, the dependants can make a reasonable living. After all, we must realise the uncertainty in one''s life span and, therefore, the multiplier method could be considered as a better device for awarding reasonable compensation. In exceptional cases, it could be open to the Tribunal to apply a higher multiplier and award higher compensation. In our view, this is not an exceptional and extraordinary case to deviate from the multiplier method being followed in similar cases.

12. Having viewed the submission made by Mr. Venkata Ramaiah, counsel for the appellants in this background, we are inclined to hold that in order to avoid unpredictability of assessment, uniformity has to be arrived at. Inconsistency of principle cannot be allowed to remain over these limitations and therefore, we are not inclined to accept the submission made by the counsel for the appellants in this behalf while seeking to persuade us to award compensation in terms of the decision in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, .

13. We have gone through the award passed by the lower court and examined the same. Probably we are of the view that the Tribunal is not right in deducting Rs. 1,200/- from the monthly salary of the deceased towards her personal expenses. In the decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the Supreme Court has also held that 1/3rd could be the reasonable amount that could be set apart for personal expenses.

14. In this case, the deceased Stella Shantha Kumari was drawing a salary of Rs. 2,500/- per month. From that 1/3rd has to be deducted towards her personal expenses. On such deduction, the remaining amount has to be considered as her net contribution to the family. Following the said principle, from out of Rs. 2,500/-73rd if deducted, comes to Rs. 1,670/-(Rs. 2,500/- minus Rs. 830/-). Therefore, Rs. 1,670/- is the monthly contribution of the deceased to her family. This amount of Rs. 1,670/- has to be taken for arriving at loss of earnings. The relevant multiplier in this case to be applied is 13. In our view, the Tribunal has rightly applied the multiplier of 13. Therefore, the loss of earnings could be as under:

Rs. 1,670/- x 13 x 12 = Rs. 2,60,520/-.

This apart, we are of the view that the appellant No. 1 is entitled for an amount of Rs. 15,000/- towards loss of consortium. However, the lower court has awarded only Rs. 2,200/-. Therefore, the Tribunal''s award to the extent of granting consortium is modified by raising it to Rs. 15,000/-. The Tribunal has awarded Rs. 7,500/-towards loss of expectancy of life and Rs. 7,500/- towards pain and suffering and loss of amenities of life. We are aware of the fact that the claimants are not entitled to claim any compensation under pain and suffering as the pain and suffering would go with the deceased person only. However, in our view, the appellants are entitled for grant of a lump sum of Rs. 15,000/-, under loss of amenities (loss to the estate). Therefore, we convert these two amounts granted under the two heads to be the amounts under the head of ''loss of amenities''. Thus, the appellants are entitled to the following amounts:

Loss of dependency Rs. 2,60,520/- Loss of consortium to the appellant No. 1 Rs. 15,000/- Loss of amenities (Loss to the estate) Rs. 15,000/- -------------- Rs. 2,90,520/- ------------

The appellants are entitled for the above sum of Rs. 2,90,520/- from the date of filing of the petition, i.e., from 12.3.1992. This apart, the appellants are also entitled to interest at the rate of 12 per cent per annum from the date of filing of the claim petition as directed by the Tribunal.

15. It is stated before us that the appellant No. 1 was awarded an amount of Rs. 40,000/-, the appellant No. 2 being the minor son was awarded an amount of Rs. 80,000/- and appellant No. 3 being minor daughter was awarded Rs. 1,00,000. Now, as we have enhanced the compensation by Rs. 70,520/-, we are of the view that appellant No. 1 could be awarded a total amount of Rs. 60,000/- instead of Rs. 40,000/-. Likewise, the appellant No. 2 being the minor son is entitled to Rs. 1,00,000/- instead of Rs. 80,000/- and so also the appellant No. 3 being minor daughter is entitled to Rs. 1,30,520/-instead of Rs. 1,00,000/-.

16. It is stated by Mr. Ashok Rama Rao, learned Counsel for the respondent No. 3 insurance company that the entire amount as awarded by the Tribunal to the tune of Rs. 2,20,000/- with 12 per cent interest along with costs has already been deposited. If that is so, the respondent No. 3 shall now deposit the amount of Rs. 70,520/- over and above the deposit already made at 12 per cent interest on the said amount from 12.3.1992. This deposit shall be made-within a period of eight weeks from today.

17. Mr. K. Venkata Ramaiah, learned Counsel for the appellants has persuaded us to permit the appellant No. 1 to withdraw the entire amount which is granted to him along with proportionate interest without furnishing any security. We see some force in the submission. Accordingly, we permit the appellant No. 1 to withdraw the entire amount which falls to his share along with proportionate interest. If any amount has already been withdrawn by the appellant No. 1, that amount has to be given credit to.

18. Coming to the shares of the minors, we are of the view that these amounts shall be kept in fixed deposit till the appellant Nos. 2 and 3 attain majority. It is open to the counsel for the appellants to file an application before the Tribunal seeking to deposit these amounts pertaining to the shares of the appellant Nos. 2 and 3, in an appropriate saving unit either in Unit Trust of India or some other unit which will fetch more benefit to the minor appellants. On such application being filed, the Tribunal shall direct the amount which falls to the share of the appellant Nos. 2 and 3 to be kept in fixed deposit till they attain majority. However, the appellant No. 1 is entitled to withdraw interest, which has accrued to the shares of the appellant Nos. 2 and 3, without furnishing any security. This amount must be used by appellant No. 1 for their education. The appellant No. 1

is also entitled to withdraw interest which falls to the share of appellant No. 2 and 3 once in six months without furnishing security.

19. This C.M.A. is accordingly disposed of by modifying the order of the Tribunal to the extent indicated above. No costs.

