

(2014) 03 AP CK 0175
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 428 of 2009

Kunche Nageswara Rao and Another

APPELLANT

Vs

G. Dayanand and Another

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Citation : (2014) 03 AP CK 0175

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

Bench : Single Bench

Advocate : B. Parameswara Rao, for the Appellant; K. Kishor Kumar Reddy, for the Respondent

Final Decision : Partly Allowed

Judgement

U. Durga Prasad Rao, J.—Challenging the award dated 09.02.2005 in O.P. No. 208 of 2002 passed by the Chairman, M.A.C.T.-cum-VI Additional Metropolitan Sessions Judge, Secunderabad (for short "the Tribunal"), the claimants preferred the instant appeal. The factual matrix of the case is thus:

a) The first claimant is the husband and the second claimant is the son of the deceased-K. Balasarswathi. Their case is that on 07.03.2002 at about 11:30 am, while the deceased was walking on the left side of the road at Alugaddabhavi Railway Bridge, one lorry bearing No. AP 9 U 3956 (Diesel Tanker) came behind her being driven by its driver at high speed and in a rash and negligent manner and dashed and ran over on the lower abdomen of the deceased. In the resultant accident, the deceased received multiple injuries and immediately she was shifted to Gandhi Hospital, Secunderabad and while undergoing treatment she died. The claimants filed O.P. No. 208 of 2002 against respondents 1 and 2 who are the owner and insurer of the offending lorry and claimed Rs. 3,00,000/- as compensation under different heads mentioned in the O.P.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2/Insurance Company filed counter and opposed the material

averments made in the petition. R. 2 denied the manner of occurrence of the accident and contended that had the deceased been little careful while walking, the accident would not have occurred. R. 2 urged to put the claimants in strict proof that the driver of the offending lorry had valid driving licence at the relevant point of time. R. 2 submitted that the policy particulars furnished by the petitioners in respect of the lorry bearing No. AP 9 U 3956 (diesel tanker) are subject to verification. R. 2 specifically denied the age and avocation of the deceased and urged to put the petitioners in strict proof of the same. Thus, R. 2 prayed for dismissal of the O.P.

d) During trial P.Ws. 1 and 2 were examined and Exs. A. 1 to A. 7 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex. B. 1.

e) Award would show that Tribunal having relied upon the oral evidence of PW. 2- de facto complainant-cum-eye witness coupled with Ex. A. 1-F.I.R., Ex. A. 2-charge sheet, Ex. A. 3-inquest report and Ex. A. 5- M.V.I. report held that the accident was occurred due to the rash and negligent driving of the driver of the lorry bearing No. AP 9 U 3956.

f) Regarding quantum of compensation, the Tribunal considering that the deceased was in the age group of 45 to 50 years, accepted "12" as multiplier. Further, considering that she was a non-earning member, quantified her services to the family at Rs. 15,000/- p.a. Deducting 1/3rd from it, the Tribunal multiplied the balance amount of Rs. 10,000/- with "12" and arrived Rs. 1,20,000/- as the net loss of services. Apart from it, the Tribunal granted Rs. 15,000/- towards loss of consortium to the 1st petitioner and another Rs. 15,000/- towards loss of estate and love and affection and thus, granted Rs. 1,50,000/- in all.

Hence, the appeal by claimants.

2. Heard arguments of Sri B. Parameswara Rao, learned counsel for appellants and Sri K. Kishor Kumar Reddy, learned counsel for 2nd respondent/Insurance Company.

3. Criticizing the award, learned counsel for appellant firstly argued that the Tribunal did not grant compensation for meeting funeral expenditure.

a) Secondly, he argued that the Tribunal erred in quantifying the household services of the deceased at Rs. 10,000/- p.a. He argued that in fact the deceased was doing saree business and earning Rs. 3,000/- p.m. and so the Tribunal ought to have taken that amount for computation of loss of earnings. Even otherwise, in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, the Supreme Court held that the services of a housewife in the age group of 34 to 59 years can be taken as Rs. 36,000/- p.a. and hence the Tribunal ought to have accepted the services of the deceased at Rs. 3,000/- p.m.

b) Thirdly, he argued that claimants are entitled to Rs. 1,00,000/- for loss of consortium basing Rajesh and Others Vs. Rajbir Singh and Others, case.

c) Finally, he argued that the interest at 6% p.a. granted by the Tribunal was too low.

He thus prayed to allow the appeal and grant just and reasonable compensation.

4. Per contra, while supporting the award passed by the Tribunal, learned counsel for R. 2/Insurance Company argued that the Tribunal granted Rs. 15,000/- towards loss of consortium which is just and reasonable. Regarding the services of the deceased, he argued that though the claimants pleaded that the deceased was doing Sarees business and earning Rs. 3,000/- p.m., they could not produce any evidence and hence, the Tribunal rightly rejected the alleged income of the deceased and quantified the household services of the deceased at Rs. 10,000/- p.a. and assessed the compensation. Hence the Tribunal cannot be found fault with. Nextly, he argued that the Tribunal having relied upon the decision reported in United India Insurance Company Limited and Another Vs. Dandugula Bheem Bai @ Bheemakka and Others, rightly held that the claimants are not entitled to funeral expenditure. Regarding rate of interest, learned counsel argued that the Tribunal granted interest at 6% p.a. which was prevailing in the nationalized banks by then.

He thus prayed to dismiss the appeal.

5. In the light of above divergent arguments, the point for determination in this appeal is:

Whether the compensation granted by the Tribunal is just and reasonable and needs any enhancement?

6. Point: So far as the income of the deceased is concerned, the Tribunal observed that except the own assertion of PW. 1, there is no documentary evidence showing her earnings in Sarees business and accordingly rejected the so called earnings of the deceased. Then the Tribunal embarked upon quantifying her household services in terms of money. The Tribunal quantified her household services at Rs. 10,000/- p.a. Before the Tribunal, Lata Wadhwa and Others Vs. State of Bihar and Others, was presented but it did not incline to consider the said decision on the ground that the said case was a fire accident case where many persons died in TISCO and it was not a motor vehicle accident. It held that the said decision would have no application. Accordingly, the Tribunal assessed the services of the deceased at Rs. 10,000/- p.a. and computed the compensation. I find no irregularity or illegality in the said assessment.

7. Then non-granting of funeral expenses is concerned, the Tribunal it appears, has relied upon a decision reported in United India Insurance Company Limited and Another Vs. Dandugula Bheem Bai @ Bheemakka and Others, and held that the claimants are not entitled to funeral expenditure.

In the said decision United India Insurance Company Limited and Another Vs. Dandugula Bheem Bai @ Bheemakka and Others, a learned Judge of this Court relied upon a decision reported in A.P.S.R.T.C. Vs. Gali Aruna and Others,)

wherein it was held as follows:

in a petition filed u/s 166, claimants are not entitled to funeral expenses. It is well known that compensation u/s 166 of the Act is awarded to compensate the loss due to untimely death of the victim. Funeral expenses have to be incurred irrespective of the fact whether the death is natural or accidental. So respondents 1 to 8 are not entitled to funeral expenses though, Schedule II of the Act provides for award of funeral expenses in a claim petition u/s 163A of the Act.

8. I am in respectful disagreement with the above decisions for two reasons. Firstly, it is true that the relatives of a deceased have to incur funeral expenditure whether the death is natural or accidental. However on that count alone, funeral expenditure cannot be denied on the premise that there is no monetary loss in real terms to the family members of the deceased. Practically speaking, sometimes the funeral expenditure will be more in case of accidental deaths than in natural deaths. Due to mutilation of body, its decomposition and dreaded appearance due to ghastly accident, sometimes the relatives of the deceased may find it difficult to get the men support to perform the last rites as per the religion the deceased belongs to. In such cases they have to spend extra money to perform the last rites satisfactorily. Added to it, the agony of the relatives to perform the funeral rites of the deceased who met with untimely death has also to be taken into consideration. Hence they deserve funeral expenditure. Secondly for the reason that in subsequent decisions the Hon"ble Apex Court recognized funeral expenditure as one of the items of compensation in motor vehicle accident cases and accordingly, granted the said item of compensation. In the recent decision in Rajesh and Others Vs. Rajbir Singh and Others, , Hon"ble Apex Court held thus:

21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head "Funeral Expenses". The "Price Index", it is a fact, has gone up in that regard also. The head "Funeral Expenses" does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "Funeral Expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-.

9. So it is needless to say that Hon"ble Apex Court opined that just compensation has to be awarded under the head funeral expenses in the cases of accidental deaths. In view of above reasons, particularly in view of Hon"ble Apex Court decision, the aforesaid decisions of our High Court cannot be accepted. Accordingly, the claimants are entitled to Rs. 25,000/-.

10. The next contention is that the Tribunal granted only a meager sum of Rs. 15,000/- towards loss of consortium and in the light of decision of Hon''ble Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, the 1st claimant deserves Rs. 1,00,000/-. Considering the said decision and also the fact that the 1st claimant lost his camaraderie in his middle age, compensation for loss of consortium is enhanced from Rs. 15,000/- to Rs. 30,000/-.

11. So far as the other contention that the rate of interest is low, I find no substance as the Tribunal taking the prevailing rate of interest in the nationalized banks allowed 6 % p.a. Thus, the claimants are entitled to total compensation of Rs. 1,90,000/- under different heads as follows:

So the compensation is enhanced by Rs. 40,000/- (Rs. 1,90,000/- minus Rs. 1,50,000/-)

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

- a) The compensation is enhanced by Rs. 40,000/- with proportionate costs and simple interest @ 6% per annum from the date of O.P. till the date of realization.
- b) Out of the enhanced compensation amount of Rs. 40,000/-, 1st claimant is exclusively entitled to Rs. 15,000/- which is the enhanced amount towards loss of consortium. The balance amount of Rs. 25,000/- shall be shared by the claimants 1 and 2 in the same ratio fixed by the Tribunal in its award.
- c) 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.
- d) No order as to costs.

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