

(2014) 06 AP CK 0196

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 1015 of 2005 and 77 of 2006

L. Hanuman Prasad and Others

APPELLANT

Vs

G. Nagendra Gound and Others

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Citation : (2015) 4 ALT 67

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Subramanyam, Advocates for the Appellant; Srinivas Rao Vutla, Advocates for the Respondent

Judgement

B. Chandra Kumar, J.—Since the parties, issues involved and facts of the case are one and the same in both these appeals and both these appeals arise out of the same award, both these appeals are being disposed of by this common order.

2. Challenging the common award dated 04.02.2005 passed in MOP Nos. 786 and 787 of 2003 by the Motor Accident Claims Tribunal - cum - II Additional District Judge, Visakhapatnam ("the Tribunal", for brevity), MACMA No. 1015 of 2005 has been filed by the claimants seeking enhancement of compensation and MACMA No. 77 of 2006 has been filed by the Insurance Company seeking to set aside the award of the Tribunal.

3. The parties will be hereinafter referred to as per their array before the Tribunal for the sake of convenience.

4. The brief facts of the case are as follows:--

"The first claimant is the father and the second claimant is the sister of the deceased - Avinash. On the fateful day of 14.08.2002, the claimants, deceased and others were traveling from Hyderabad to Mantralayam in a Toyota Qualis bearing registration No. AP 28 U 9913. At about 5:30 PM when they reached Manopad village on National Highway No. 7, the offending Acid Tanker bearing

registration No. AP 28 T 4977, being driven by its driver in a rash and negligent manner and at high speed, came from opposite direction and dashed against the Qualis. As a result of the said accident, the deceased minor boy (Avinash) and his mother (Anitha) died on the spot and the other persons who were traveling in the Qualis sustained injuries. The Police registered a case against the driver of the Qualis. The claimants, contending that the deceased minor boy was a brilliant student studying 10th class in SFS School, Visakhapatnam, claimed a total compensation of Rs. 3,04,500/-.

5. The first and the second respondent are the driver and the owner of the Qualis respectively and the third respondent is the Insurance Company with which the Qualis was insured. The fourth respondent is the owner of the Acid Tanker and the fifth respondent is the Insurance Company with which the Acid Tanker was insured as on the date of accident.

6. The third and the fifth respondent resisted the claim of the claimants on various grounds and the other respondents remained ex parte.

7. The Tribunal framed the following issues for trial:--

"i. Whether the accident occurred on account of the rash and negligent driving of the drivers of both vehicles and whether it resulted in the death of the victims?

ii. Whether the petitioners are entitled for compensation in MOP No. 786 of 2003? If so, to what amount?

iii. Whether the petitioners are entitled for compensation in MOP No. 787 of 2003? If so, to what amount?

iv. Which of the respondents are liable to pay compensation?

v. To what relief?"

8. On behalf of the claimants, the first claimant was examined as P.W. 1 and Exs. A.1 to A.15 were marked. On behalf of the respondents, R.W. 1 was examined and Exs. B.1 to B.3 were marked.

9. On the issue of negligence, the Tribunal, on appreciation of oral and documentary evidence available on record, came to the conclusion that driver of the Qualis and the driver of the Acid Tanker are both responsible for the accident and accordingly apportioned the negligence between them as 50:50.

10. On the issue of quantum of compensation, the Tribunal took the notional income of the deceased at Rs. 15,000/- and after deducting 1/3rd towards personal expenditure and by applying multiplier 16, awarded an amount of Rs. 1,60,000/- towards loss of dependency. The Tribunal also awarded an amount of Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate and thus awarded a total compensation of Rs. 1,64,500/-.

11. The learned counsel for the claimants, placing reliance of the judgment of the Apex Court in the case between Kishan Gopal and Another Vs. Lala and Others,

and the judgments of the Division Bench of this Court in the cases between N. Surender Rao and Others Vs. B. Swamy and Another, and B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, , submitted that in view of the principles laid down in the above referred judgments, the amount awarded by the Tribunal is very meager.

12. On the other hand, learned standing counsel for the Insurance Company submitted that the amount awarded by the Tribunal is exorbitant and, therefore, the amount of compensation has to be reduced. It is also specifically argued by the learned standing counsel for the Insurance Company that when the FIR was issued against the driver of the Qualis, the Tribunal committed an error in holding that the driver of the Acid Tanker also was responsible for the accident.

13. The points that arise for consideration both appeals are (1) Whether the finding of the Tribunal that the accident occurred due to the negligence of the drivers of both the vehicles is correct; and (2) what is the just and reasonable amount of compensation that can be awarded to the claimants.

14. On behalf of the claimants, the first claimant is examined as P.W. 1. At the time of accident, he was traveling in Qualis. Thus, he is the eye-witness of the accident. He had categorically deposed that the Acid Tanker was coming from opposite direction and hit the second door of the Qualis. He further categorically deposed that the accident occurred due to rash and negligent driving of the drivers of both the vehicles. Of course, it is not in dispute that FIR was issued against the driver of the Qualis. The police also, after completing investigation, came to the conclusion that the driver of the Qualis is responsible for the accident. Ex. B.3 is the Copy of the Charge-sheet. The Tribunal, by observing that neither the driver of the Qualis nor the driver of the Acid Tanker were examined before it and the evidence adduced before it reveal that both the drivers are responsible for the accident, came to the conclusion that there is composite negligence.

15. On behalf of the respondents, R.W. 1 was examined. He is only an officer of the Insurance Company. He is not an eye-witness to the accident. The only eye-witness to the accident is P.W. 1 who was traveling in the Qualis that met with the accident. Admittedly, the Acid tanker is a heavy vehicle. It appears that there is nothing to disbelieve the version of P.W. 1 and thus, it cannot be said that the finding of the Tribunal on this issue is perverse and not based on evidence. The Tribunal has to appreciate the evidence adduced before it. The FIR and the charge-sheet have to be considered in the light of the other evidence adduced before the Tribunal. When the sole testimony of P.W. 1 reveal that there was contributory negligence in occurrence of accident, the Tribunal is justified in believing the evidence of P.W. 1, particularly, in the absence of any contra evidence. Therefore, I do not see any reason to disturb the finding of the Tribunal on this aspect.

16. On the issue of quantum of compensation, the Apex Court, in Kishan Gopal's

case (supra), the Apex Court was considering the claim arising out of the death of the children. The Apex Court observed that it would be just and reasonable to take the notional income of the child at Rs. 30,000/- per annum. In that case, the deceased was aged about 10 years. The Apex Court also observed that the claimants are also entitled to Rs. 50,000/- under the conventional heads towards loss of love and affection and funeral expenses.

17. A Division Bench of this Court, in N. Surender Rao's case (supra), relying on Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, } observed that the age of the deceased was alone be taken for adopting the multiplier in view of the law as on today. As far as the income of the children is concerned, it was taken at Rs. 12,000/- per month since the deceased was an engineering graduate.

18. In Rajesh and Others Vs. Rajbir Singh and Others, , the Apex Court observed that the claimants are entitled for Rs. 1,00,000/- towards loss of estate and Rs. 25,000/- towards funeral expenses.

19. In B. Ramulamma's case (supra), a Division Bench of this Court to which I am a party, has dealt with the case of the students and observed as follows:--

"The job, which the deceased would have secured had he not died in the motor accident and the salary of his classmates should be the basis. Similarly, where the students have acquired basic qualifications such as Electrician, Fitter, Technician, Driver etc., and who died or sustained permanent disability, their income may be fixed on the basis of the income prescribed under the Minimum Wages Act or on the basis of the income earned by the newly appointed persons to such jobs whichever is on higher side."

20. In the light of the above referred judgments, it appears that Kishan Gopal's case (supra) is not applicable since the deceased in the instant case is 16 years in this case.

21. In this case, the deceased was aged about 16 years and he was studying 10th class. He was the only son of his parents. Even if 10th class qualification is taken, the deceased would have secured a job with minimum basic of Rs. 6,000/- per month. Even if 50% is deducted towards personal expenditure, the loss of earnings would be Rs. 3,000/- per month and the annual loss would be Rs. 36,000/-. The appropriate multiplier applicable to the instant case is 18. Thus, the total loss of earnings would come to Rs. 6,48,000/-. The claimants are also entitled for Rs. 1,00,000/- towards loss of Estate and Rs. 25,000/- towards funeral expenses.

22. Thus, the claimants are entitled for a total compensation of Rs. 7,73,000/- (Rupees seven lakhs seventy three thousand only). The amount now awarded shall carry interest at the rate of 7.5% per annum from the date of petition till realization. Respondents 1 to 3 and 4 and 5 are jointly and severally liable to pay compensation to the claimants at 50:50 ratio. Out of the amount now awarded,

the first claimant (father) is entitled for Rs. 5,79,750/- and the second claimant (sister) is entitled for Rs. 1,93,250/-.

23. It is settled law that irrespective of the amount claimed by the claimants, the Courts may award compensation which appears to be just and reasonable in the facts and circumstances of the case. Since the compensation now awarded is more than the compensation claimed by the claimants, the claimants are directed to pay the deficit Court fee before obtaining the decree.

24. Accordingly, M.A.C.M.A. No. 1015 of 2005 filed by the claimants is allowed and MACMA No. 77 of 2006 filed by the Insurance Company is dismissed. There shall be no order as to costs.