
(2014) 08 AP CK 0029
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 924 of 2009

M. Posham

APPELLANT

Vs

S. Kalavathi

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Employees Compensation Act, 1923 — Section 4(1)(a), 4(4)
Motor Vehicles Act, 1988 — Section 147(1)(b), 166, 167

Citation : (2015) 1 AnWR 106

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

Bench : Single Bench

Advocate : S. Surender Reddy, Advocate for the Appellant; Muddu Vijay and I. Raja Mallaiah, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 05.01.2009 in O.P. No. 445 of 2004 passed by the Chairman, MACTcumDistrict Judge, Adilabad (for short the Tribunal), claimants, who are parents and R.3 who is wife of deceased preferred M.A.C.M.A No. 924 of 2009 and M.A.C.M.A No. 3593 of 2009 respectively.

2. The facts in brief are that:

a) The claimants are parents and R3 is the wife of deceased M.Srinivas. On the intervening night of 18/19.02.2004 when the deceased was proceeding on his lorry/truck bearing No. AP 01 T 8118 from Hyderabad to Mandamarri and when he reached Chagallu near Station Ghanpur on HyderabadWarangal road he lost control over the vehicle and hit a roadside tree resulting instantaneous death of the deceased. It is the case of the claimants that the offending lorry/truck belongs to the first respondent was insured with R2/ Insurance Company on the date of accident and the said policy covers the risk and hence, they are entitled to compensation. With these pleas, they filed OP No. 445 of 2004 against respondents 1 and 2, who are the owner and insurer of the crime lorry and

claimed Rs.2,50,000/- as compensation under different heads. They added wife of deceased as R.3 on the plea that she refused to join them to file O.P.

b) First respondent remained ex parte.

c) R2 Insurance Company firstly denied the age, avocation and income of the deceased. It also denied the insurance of lorry/truck with it and urged to put the claimants to strict proof. It pleaded that the deceased had no valid driving licence and accident was occurred only due to the fault of the deceased himself and consequently neither the first respondent nor it is liable to pay any compensation. It also pleaded that the claimants ought to have filed claim for compensation before the Workmens Compensation Tribunal and therefore, OP is not maintainable. Finally, it pleaded that claim is excessive.

d) Third respondent/wife in her written statement denied that she never refused to cooperate with the petitioners in filing OP. Her version is that claimants themselves did not cooperate with her and therefore, she filed Workmens Compensation Case No. 14/2004 before the Deputy Commissioner of Labour, Warangal impleading them as respondents 3 and 4 in the said case. She pleaded that petitioners are not dependants of the deceased and they are not entitled to any compensation. She pleaded for dismissal of OP on the ground that her claim petition is pending before the Deputy Commissioner of Labour.

e) PW.1 was examined and Exs.A.1 to A.6 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

f) On appreciation of evidence, the Tribunal held that the deceased himself was responsible for the accident. It awarded Rs.1,25,663/- as compensation under different heads as follows:

Loss of earnings

Rs.1,23,163/-

Funeral expenses

Rs. 2,500/-

Total Rs.

1,25,663/-

Hence the appeals: 1) MACMA No. 924 of 2009 by the parents/ claimants challenging the quantum of compensation as inadequate and (2) MACMA No. 3593 of 2009 by R3/ wife.

3. Heard arguments of Sri S. Surender Reddy, learned counsel for appellants/ claimants in MACMA No. 924 of 2009/ respondents 1 and 2 in MACMA No. 3593 of 2009, Dr. Muddu Vijay, learned counsel for R.2 Insurance Company in MACMA No. 924 of 2009/ respondent No. 4 in MACMA No. 3593 of 2009 and Sri I. Raja Mallaiah, learned counsel for R.3 in MACMA No. 924 of 2009/ appellant in MACMA

No. 3593 of 2009. Notice to R.1 in MACMA No. 924 of 2009/R.3 in MACMA No. 3593 of 2009 was served but no representation and hence, treated as heard.

4. The parties in these two appeals are referred as they stood before the Tribunal.

5a) Challenging the method adopted by the Tribunal for computation of compensation, the learned counsel for appellants in both the appeals firstly argued that when their claim is under Motor Vehicles Act, 1988 (for short M.V.Act), the Tribunal should not have computed compensation under Workmens Compensation Act, 1923 and thereby, the compensation was drastically reduced.

b) Secondly, questioning the quantum of compensation, they argued that the Tribunal committed error in accepting the annual income of deceased as Rs.15,000/- p.a following the Second Schedule of M.V.Act. Their contention is that the deceased was a lorry driver under 1st respondent/ owner and died in due course of his employment and was earning Rs.5,000/- p.m. and therefore, he should not have been treated as a non-earning person to adopt the notional income of Rs.15,000/- p.a. On the other hand, the Tribunal ought to have fixed a reasonable amount as his income, as a lorry driver would earn. Or otherwise, since the Tribunal computed compensation under Workmens Compensation Act, it ought to have fixed his notional income basing on the minimum wages earned by the deceased as a driver of motor vehicle. Contrary to it, the Tribunal adopted the notional income under Second Schedule of the M.V.Act which is quite irrelevant and unsuitable to the facts of the case. Thus, they prayed to allow their respective appeals and enhance the compensation suitably.

6. Per contra, opposing the two appeals, learned counsel for Insurance Company would contend that since the policy issued by the Insurance Company was an act policy and risk of the deceased was covered only to the extent of compensation payable under Workmens Compensation Act, the Tribunal rightly assessed compensation under Workmens Compensation Act. Therefore, he would argue, though the claim was one u/s 166 of M.V. Act, the Tribunal was perfectly right in applying the provisions of Workmens Compensation Act for computation of compensation in the circumstances narrated supra. He relied upon the decision reported in Oriental Insurance Company Limited vs. Mohd. Nasir and another on the point that the provisions of Workmens Compensation Act, 1923 would also be applicable to the claim applications arising out of the provisions of M.V. Act, 1988. Learned counsel would further argue that the Tribunal was also right in adopting the notional income of Rs.15,000/- p.a as prescribed in the Second Schedule of M.V. Act since the claimants failed to produce cogent evidence relating to actual earnings of the deceased. He thus prayed to dismiss both the appeals.

7. In view of the above rival arguments, the points that arise for consideration in these appeals are:

1) When the accident was occurred due to the fault of deceased/driver himself, whether his L.Rs. can lay claim u/s 166 of MV Act i.e. under fault liability

principle and whether the tribunal under the M.V. Act was empowered to adjudicate such claim?

2) If point No. 1 is held in affirmative, whether the compensation awarded by the tribunal is just and reasonable or needs enhancement?

8. POINT No. 1: The accident, involvement of lorry/truck bearing No.AP 01 T 8118 and death of the deceased are not in dispute. The finding of the tribunal in respect of issue No. 1 as can be found in para-10 of the judgment appears to be that the accident was occurred due to fault of deceased himself, as he lost control over the lorry while driving it and as a result the lorry went and hit a road side tree causing his instantaneous death. Obviously no other vehicle was involved in the accident.

a) Be that it may, claim petition is filed u/s 166 of M.V.Act, 1988 and the tribunal also treated the claim as one under the said provision. However, the tribunal basing on the facts that the deceased who was the driver of the lorry died during the course of employment and that Ex.A5policy issued by R2/Insurance Company was only an Act policy and covers his risk to the extent of compensation payable under Workmens Compensation Act, has computed compensation under Workmens Compensation Act, 1923 and awarded to the claimants and third respondent. Therefore, it is contended that when the claim is filed under M.V.Act the tribunal was not right in determining the compensation under the provisions of Workmens Compensation Act, 1923. The claim u/s 166 is one under the principle of fault liability. However, the pleadings and finding of the tribunal as narrated supra are to the effect that accident was occurred only due to the fault of deceased himself as driver of ill-fated lorry. In such scenario the point is, whether claim is maintainable u/s 166 of MV Act since the claim under the said section will be generally instituted by the claimant or his LRs. by imputing the fault on the owner or some other person but not on the victim himself as in the instant case. Therefore, it necessitated this appellate Court to decide legality of decision of the tribunal.

9. The point under controversy is no more res integra . We have two decisions of learned single Judges of this High Court on this aspect.

a) In United India Insurance Co. Ltd., Armoor Branch, Nizamabad v. Kore Laxmi and others the facts are that deceased K.Anand driver of the lorry bearing No.AP 25 T 1452 drove his lorry in a rash and negligent manner and rammed into an oncoming lorry bearing No.ATJ 407 and died in the resultant accident. His LRs. filed claim petition against the owner and insurer of his lorry. The tribunal though basing on the material on record held that accident was occurred due to the fault of the deceased himself, however, awarded compensation to the claimants under Workmens Compensation Act, 1923. The insurance company preferred appeal challenging the award on the main contention that when the accident was occurred due to the fault of deceased himself the claim is not maintainable u/s 166 of MV Act. Whereas the claimants contended that u/s 167 of MV Act they

have option to move either under Workmens Compensation before the Commissioner or under M.V.Act for compensation. Learned single Judge on verification of several decisions of various High Courts has held thus:

29. In the above view of the matter, I am of the opinion that neither this Court nor the Claims Tribunal has the power to enquire into the question of compensation payable under the WC Act. The said question has to be determined by the Commissioner under the WC Act, on the basis of strict liability, which is imposed by the statute itself.

30. In the facts and circumstances of the present case, I am of the opinion that the claimants have mistakenly moved the Claims Tribunal under the M.V Act. It does not mean that the claimants have elected a forum. In the facts and circumstances of the case, even though the claimants/respondents filed claim petition before the Claims Tribunal under the MV Act, it does not bar them from making a claim before the Commissioner under the WC Act. The claimants are at liberty to file claim petition before the Commissioner for Workmen's Compensation once again to seek redressal of their claim.

b) The matter has not ended there. The same question came up for consideration in subsequent decision before another learned single Judge in a case reported in Adhikarala Jagadeeswara Rao v. Gopala Krishna Transport and others. One of the points for determination before His Lordship was:

(iv) Principles for fixing the compensation under Motor Vehicles Act and Workmens Compensation Act are altogether different, whether the Tribunal created under M.V.Act can entertain any claim by a driver of the vehicle against his employer for awarding compensation under Workmens Compensation Act.

Learned single Judge on perusal of several decisions including United India Insurance Co. Ltd., Armour Branch, Nizamabad Dist. Vs. Kore Laxmi and Others, and also the decision of Apex Court in Rita Devi v. New India Assurance Co.Ltd. has held thus: From the foregoing discussion, it is seen that the principle underlying the judgment wherein the Tribunal constituted under the Motor Vehicles Act cannot award compensation under Workmen's Compensation Act unless it is pleaded and proved that the accident "has taken place due to rash and negligent driving of the vehicle by its driver, the liability of the Insurance Company to pay compensation does not arise has been watered down in the subsequent decisions and their Lordships of the Supreme Court in Rita Devi's case (supra) clearly held that u/s 167 of M.V. Act the Tribunal constituted under M.V. Act is fully competent to adjudicate the claims even under Workmen's Compensation Act.

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Hence, an employee due to whose fault the accident might have taken place might have approached the Motor Vehicles Claims Tribunal u/s 166 of the M.V. Act without knowing the legal position and on that ground, the Tribunal need not

necessarily relegate him to the authority under the Workmen's Compensation Act." It can itself award compensation under the provisions of Workmen's Compensation Act as long as he has not chosen the other Forum to claim compensation. In Helen C. Rebello's case (supra) the Supreme Court observed that while interpreting a beneficial legislation held that the view that subserves the object of the legislation should be accepted in the following terms.

"Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which subserves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have been given of this statute, evidenced by two distinct sets of decisions of the various High Courts. We have no hesitation to conclude that the set of decisions which applied the principle of no deduction of the life insurance amount should be accepted and the other set which interpreted to deduct, is to be rejected."

d) In the above finding the learned Judge observed that the earlier decision in United India Insurance Co. Ltd., Armour Branch, Nizamabad Dist. Vs. Kore Laxmi and Others, was not a good law in the light of decision in Hellen C Rebello v. Maharashtra State Road Transport Corporation.

In respect of subsequent point i.e. whether a driver who is responsible for causing the accident can file a claim petition under M.V.Act, learned single Judge has further held thus:.. Hence an application claiming compensation by a driver who is responsible for causing the accident is maintainable both under the provisions of M.V.Act as well as Workmens Compensation Act in any of the two Forums. But he is entitled to receive compensation as per the provisions of Workmens Compensation Act only and this position is made clear in the proviso to Section 147(1)(b) of M.V.Act.

10. No subsequent judgments of this High Court or Apex Court are brought to my notice. So, in substance the law on the point in issue as per the latest judgment available is that when a driver himself is responsible for the accident and a claim petition is filed by him or his L.Rs. u/s 166 of MV Act by choosing the Forum under M.V.Act as per Section 167, then the tribunal cannot grant him compensation u/s 166 of MV Act (on fault liability principle) but it can award compensation under Workmens Compensation, since in a claim under Workmens Compensation Act there is no need to prove the fault or negligence on the part of owner or some other.

a) When the above ratio is applied to the facts of the present case, since accident was occurred due to the fault of the deceased himself, it is obvious that the claimants are not entitled to compensation under the provisions of M.V Act and tribunal cannot grant compensation u/s 166 of M.V.Act. However, it can determine and award compensation under Workmens Compensation Act. Therefore, the lower tribunal in the instant case was right in determining the compensation under Workmens Compensation Act though it did the said exercise

under a different context i.e. in view of Ex.A5policy issued by 2nd respondent/ insurance company covering the risk of deceased to the extent of compensation payable under Workmens Compensation Act only.

This point is answered accordingly.

11. POINT No. 2: Since point No. 1 is held in affirmative, it has now to be seen whether the compensation awarded by the tribunal is just and reasonable or not. The tribunal awarded compensation following Section 4(1)(a) which reads thus:

4. Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely

a) Where death results from the injury: an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of Rs.50,000/-, whichever is more.

a) Sofaras the income of the deceased is concerned, the claim of the claimants that deceased was earning Rs.5,000/- per month was disbelieved by the tribunal on the observation that they failed to let in any convincing evidence. Hence, it followed Second Schedule of the MV Act and fixed his annual income at Rs.15,000/- per annum. I am unable to countenance the said fixation.

b) It must be noted that this Court in an unreported judgment dated 06.08.2014 in MACMA No. 2601 of 2009 (The United India Insurance Co. Ltd. vs. Smt.K. Kistamma and others) while relying upon the decision reported in Vishan Das and others vs. Suwa Lal and others has held as follows:

The notional income of Rs.15,000/- as provided in item No. 6 of Second Schedule appended to M.V.Act applies to those persons who had admittedly no income prior to the accident. The heading to Item No. 6 which reads as Notional income for compensation to those who had no income prior to accident, itself is self-explanatory in this regard. Should we give a plain meaning to the words who had no income prior to accident we understand that they refer to those persons who admittedly had no income prior to accident. We can visualize those persons as old and infirm, bed ridden by sickness and those who had no earning capacity. In respect of those persons, notional income has to be taken as Rs.15,000/- for computation of compensation. However, honestly speaking the said notional income will not apply to other persons who are able bodied persons and having earning potentiality and those who are employed in one or other avocation and earning some income. In respect of such persons even if there is no concrete evidence regarding their earnings, the Court shall make a reasonable estimate of their earnings having regard to their age, nature of occupation etc.

On the other hand, the decision in Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, cited by learned counsel for Insurance Company can be distinguished on facts. In that case it was observed by the Honourable Apex Court that in respect of claims filed under M.V Act for compensation for permanent disability, the disability can be determined with reference to Schedule

I under Workmens Compensation Act, 1923. There is no demur about the said proposition. However, the same is not applicable to the facts of the present case.

c) Thus in view of the decision in The United India Insurance Co. Ltd. vs. Smt. K. Kistammas case, fixation of notional income at Rs.15,000/- per annum to the deceased who was admittedly an young person of 35 years and was under the employment of first respondent as lorry driver is not correct. Therefore, having regard to his age and avocation his income by the date of his death can be reasonably fixed at Rs.2,000/- per month. Thus, the compensation payable would work out to Rs.1,97,060/- (50% of Rs.2,000/- x 197.06). Added to the said amount the claimants and third respondent are entitled to Rs.5,000/- towards funeral expenditure as per Section 4(4) of Employees Compensation Act, 1923 (Amended Act 45/2009 with effect from 18.01.2010). Thus, the claimants and third respondent are entitled to total compensation as follows:

Loss of earnings

Rs.1,97,060.00

Funeral expenses

Rs. 5,000-00

Total

Rs.2,02,060-00

Hence, the compensation is enhanced by Rs.76,397/- (Rs.2,02,060 minus Rs.1,25,663/-). This point is answered accordingly.

12. In the result, in view of the above findings, both the MACMAs are disposed of as follows:

(a) MACMA No. 924 of 2009 and MACMA No. 3593 of 2009 are partly allowed and compensation is enhanced by Rs.76,397/- with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

(b) Respondents 1 and 2 in the OP are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.

(c) The claimants and third respondent in OP shall share the compensation amount equally.

(d) No costs in both the appeals.

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