

(2002) 01 AP CK 0100
In the Andhra Pradesh High Court
Case No : L.P.A. No. 5 of 1997

Manager, The New India Assurance Co. Ltd.	APPELLANT
Vs	
Chintnala @ Anaganti Narasimha and Another	RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 475
Land Acquisition Act, 1894 — Section 11, 25
Motor Vehicles Act, 1939 — Section 110B
Motor Vehicles Act, 1988 — Section 162, 165(1), 166, 166(1), 166(2)

Citation : (2002) 3 ALT 194

Hon'ble Judges : D.S.R. Varma, J; B.S.A. Swamy, J

Bench : Division Bench

Advocate : Kota Subba Rao, for the Appellant; B. Narayana Reddy, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—In this LPA the issue that falls for consideration is whether the Motor Accidents Claims Tribunal-cum-District Judge or this Court on appeal is empowered to grant higher compensation over and above the claim made by the claimants in O.P.

2. In this case the claimant who was injured in a motor vehicle accident, that has taken place on 12-1-1989 had claimed one lakh rupees as compensation.

3. The Tribunal awarded compensation of Rs. 60,000/- under different heads including an amount of Rs. 43,200/- towards loss of future income on the basis of the Salary Certificate i.e., Ex.A-3, whereunder it was shown that he was drawing a salary of Rs. 500/- only from a poultry at the time of accident with 12% interest per annum from the date of filing of the application.

4. Aggrieved by the award, the respondent herein i.e., the claimant filed C.M.A.No. 1845 of 1991. The learned Judge enhanced the compensation payable

towards loss of future income observing that "in assessing the compensation payable to a victim it is always necessary to take into account all the attending facts and circumstances of the case, the possibility of a person prospering in status and advancing in his earning capacities in future life" by placing reliance on a judgment of the Supreme Court in *P.C. Kakar Vs. Commandant, Military Hospital, Trimalgiri and Others*, , General Manager, Kerala State Road Transport Corporation, *Trivandrum Vs. Mrs. Susamma Thomas and others*, and arrived at that the loss of Income would be of Rs. 7200/- per year. Thereafter the learned Judge applied multiplier of 16 and awarded compensation towards loss of future income. The learned Judge also awarded a compensation of Rs. 20,000/- for pain and suffering. In all compensation of Rs. 1,39,700/- with 12% interest per annum from the date of presentation of O.P. till realization was granted.

5. As stated supra, the claimant restricted his claim at Rs. 1,00,000/- while claiming compensation, but the learned Judge relied on a judgment of this Court reported in *New India Assurance Company Ltd. by its Branch Manager Vs. G. Lakshmi alias Pentamma and Others*, ,.

6. The Counsel for Appellant for the Insurance Company brought to our notice that:

(1) The learned Judge reiterated his view sitting along with Sri Justice A. Gopal Reddy, in *APSRTC, Mushirabad, Hyd. Vs. Patan Shamshad Begum and others*, .

(2) Sitting along with Sri Justice V. Eswaraiah, in C.M.A. 1328 of 1995 dated 5-7-2001 as seen from the page 17 of the subsequent judgment rendered by his Lordship sitting along with Ms. Justice G. Rohini, in *Pidigala Linga Reddy and Others Vs. Satla Srinivas and Others*,

(3) But the Hon"ble Supreme Court in *Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another*, as well as.

(4) A full bench of Gujarat High Court in *Dr. Urmila J. Sangani Vs. Pragjibhai Mohanlal Luvana and Others*, (Gujarat).

(5) A Division Bench of this Court in *Kollipara Veera Raghavamma and Another Vs. S. Raghavaraju and Others*,

(6) A Judgment of Sri Justice Vaman Rao in *Oriental Insurance Company Ltd., Karimnagar Vs. Suthari Lingaiah and others*, .

(7) A judgment of Sri Justice N.V. Ramana in *Oriental Insurance Co. Ltd., Warangal Vs. Thudi Mallamma and others*, .

have taken a converse view and held that the Tribunal or the Court is not empowered to award higher compensation than the compensation claimed by the claimant himself. Unfortunately, the judgments, which have taken converse views, are not cited before the learned Judges who rendered the judgment on both sides of the principle. In any of the judgments no reasons were given except in s"upra-6. Hence we are forced to review the ratio decidendi laid down

in all these cases to find out which view is correct.

7. In Lakshmi's case (2 supra) the learned Judge having relied on Section 110-B of the Motor Vehicles Act, 1939 (old Act) corresponding to Section 168 of the new Act, observed that the Court after giving an opportunity of being heard and after holding enquiry into the claim, as the case may be, each of the claims, and specially the provisions of Section 162 may make an award determining the amount of compensation which bears to it, to be just -and held that under the above Section the Tribunal is entitled to grant just compensation while considering the totality of the circumstances that is to say, compensation should be just in the opinion of the Tribunal. Having interpreted the section in that manner held

"Therefore, it is clear that there is no embargo imposed by the Legislature on the tribunals to grant compensation over and above the amount claimed by the parties in a given case."

8. Having taken the said view, the learned Judge granted compensation over and above the amount claimed by the claimant. In support of his view, his Lordship placed reliance in R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, ." wherein the Supreme Court has held that the technicality of law should not be permitted to stand in the way in directing just compensation to the parties. In para-27 of the judgment his Lordship observed-

"As I said earlier the Legislature has not imposed any embargo on the Tribunals to grant higher compensation over and above the compensation claimed by the parties"

and has taken support from some of the decisions referred therein. Very soon after the first judgment of the learned Judge, a Division Bench of this Court had an occasion to consider the issue in (7 supra). In this case though the Court came to the conclusion that in the circumstances of that case the claimant is entitled to a compensation of Rs. 84,000/- as the claimant has asked for only Rs. 48,000/-restricted the claim to that extent only. Their Lordships after awarding compensation under various heads held as here under:

"Therefore, the total compensation would come to Rs. 1,68,000/-. Even if we reduce it by half, towards unforeseen contingencies, it would come to Rs. 84,000/-. But, in this case the claimants have asked for only Rs. 48,000/-. We therefore, pass an award for a sum of Rs. 48,000/- to the claimants towards compensation with interest @ 10 per cent per annum from the date of the petition."

9. Subsequently in Adikonda Sethi (Died) through L.Rs and Anr. v. Palaniswamy Saran Transport and Anr. (5 supra) their Lordships of the Supreme Court having awarded 1.40 lakhs towards compensation restricted the compensation to Rs. 1,00,000/- in the following words.

"Thus, we have to conclude that the annual income of the deceased is Rs. 12,000

and he would have spent Rs. 7,500/- towards the family members and 1/3rd for himself; thereby the annual dependency is taken at Rs. 9,000/- per year and multiplier of 18 years which is the maximum in the case of the young person dying in an accident, has to be applied. The claimants would get Rs. 1,40,000/- towards the compensation. Since the claim is limited to Rs. 1,00,000/- the claimants are entitled to get Rs. 1,00,000/- as compensation with interest at 6 per cent per annum from the date of the judgment of the High Court."

10. The other two learned Judges of this Court also have taken the similar view. As different High Courts have taken conflicting opinions on reference made to it, a Full Bench of the Gujarat High Court in "Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana" (6 supra) considered the entire case law and held that the Court is not empowered to award higher compensation than what is claimed by the claimant himself. It is useful to extract Para-10 of the Judgment wherein the issue was elaborately discussed.

"The Supreme Court in catena of decisions has ruled that an amendment for enhancing the amount of claim as and when prayed for should be liberally granted and that the Tribunal should not be rigid about the granting of amendment. Thus, it is always open to the claimant to move an amendment application claiming higher compensation and if it is granted, opposite parties support of their case, after which higher compensation can always be awarded to the claimant. Therefore, the view which we propose to take that the Tribunal has no power or jurisdiction to award higher amount of compensation though not claimed by the claimant, is not likely to cause any prejudice to the claimant at all."

11. From the above, it is seen that the decision of Tribunal must be confined to the claim raised by the parties. It cannot travel beyond the pleadings and award higher compensation though not claimed by the claimant and the same is likely to result the very scheme to award compensation will be nullified, which was not envisaged by the provisions of the M.V. Act. Relying on the Supreme Court judgment in Union of India Vs. E.I.D. Parry (India) Ltd., ", held that the compensation must be confined to claims, raised by the parties and it cannot travel beyond the claim. Therefore it would not be correct to say that the Tribunal has power or jurisdiction to award higher amount as compensation though not claimed by the claimant.

12. Nextly, their Lordships observed that if the claimant feels that he is entitled to more compensation than he claimed in the petition, it is always open to him to amend the same on the basis of equity of justice and good conscience. The view of the Full Bench was summarized as hereunder.

"Therefore, the view which we propose to take that the Tribunal has no power or jurisdiction to award higher amount of compensation though not claimed by the claimant, is not likely to cause any prejudice to the claimant at all."

13. We are in perfect agreement with the reasons given by the Gujarat High

Court. Their Lordships demonstrated by citing examples how the scheme will be nullified if the Court starts giving higher compensation than claimed by the claimant.

14. In Land Acquisition Act u/s 25, as stood prior to 1984 the irrevocable view of the Courts is that the Court shall not grant higher compensation than the compensation claimed by the claimant before the Land Acquisition Officer or the reference Court. After amendment, the Section 25 is as hereunder:

"The amount of compensation awarded by the Court shall not be within the amount awarded by the Collector u/s 11. The plain amending of this Section is that even if the court feels that the compensation awarded by the L.A.O. is a higher side they cannot disturb the same in the height of the Section capable in Section 25 of the Act. Hence it cannot be presumed that the Court is empowered to award higher compensation than which was claimed by the claimant."

15. From the above, it is seen that after amendment of Section 25 while the statute placed fetters on the Court, in not reducing the compensation awarded by Land Acquisition Officer even if the compensation awarded by Land Acquisition Officer is not proper, no where it is stated that the Court can award compensation, higher than the one claimed by the Land looser.

16. Secondly u/s 166(2) of the Motor Vehicles Act 1988 an application for compensation, arising out of an accident in the nature specified under Sub-section (1) of Section 165 may be made to the Tribunal. Section 168 reads thus:

"The Tribunal on receipt of an application for compensation made u/s 166, the Claims. Tribunal shall, after giving notice of the application to the insurer and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just"-

17. The Counsel for the respondent strenuously contends that the Act compensates the payment of compensation without reference to the actual claim of the claimant. To appreciate this contention we have to look to Rule 475 of the Motor Vehicles Rules reads thus:

"Every application made under Sub-section (1) of Section 166 shall be made in form CID and shall be accompanied by the prescribed fee therefore in rules."

(1) "Special damages" was divided into three heads

(2) "General damages" divided into 3 heads. From the nature of the application it is seen that the claimant should arrive at the compensation that he is entitled to before filing application, seeking award of compensation. Under Rule-475: every application made u/s 166 of the Act shall be accompanied by a fee in the form of Court fee Stamps as specified therein:

Amount of Claim Amount of Court Fee Up to Rs. 10,000 Rs. 10 From Rs. 10,000

to 50,000 1/4% to the amount of claim From Rs. 50,000 to 1,00,000 1/2% of the amount of claim Above Rs. 1,00,000 1% of the amount of claim

18. From the above, it is seen that the claimant has to claim specific amounts and various heads whatever amount is and claimed as compensation, the claimant has to pay Court Fee as specified under Rule 475, on the amount claimed by him. In this case the claimant not only restricted his claim for Rs. 1,00,000 but also produced Ex. A-3 i.e., the salary certificate given by his employer wherein he is being paid Rs. 500. Hence the claimant knowing fully well his earning capacity restricted his claim to Rs. 1,00,000/-.

19. Perhaps, on the basis of the salary that is being drawn by him at the time of accident and taking future profits of increase in the salary he might have restricted the claim to Rs. 1,00,000/- and paid the Court Fee thereon.

20. From the above, it is seen that if the Court starts paying higher compensation than the compensation claimed by the individual it amounts to traversing beyond the pleadings on which the parties went to trial and it amounts to transgression of its jurisdiction. Hence we hold that the principle laid down in New India Assurance Company (2 supra) as reiterated in the Division Bench Judgments in supra-3, and in C.M.A.No. 1328/98 in supra-4 is not the correct law.

21. Accordingly, we hold that the Tribunal/Court is not empowered to award higher compensation than the compensation claimed by the claimant. If the claimant feels that the compensation claimed is grossly inadequate, it is always open to him to seek amendment of the pleadings and the Tribunal may consider the amendment liberally and give an opportunity to the other side to put forth his case. Such a situation is possible only before the Tribunal but not in the Appellate Court. We were initially inclined to permit the respondent to amend the pleadings as appeal is a continuation of the original proceedings and the matter has not attained finality. Unfortunately, a learned Judge of this Court has taken the view that the award of compensation under the Motor Vehicles Act, being a self contained Code, permitting the parties to amend their pleadings at the appellate stage is not permissible. Of course this is a debatable issue and in the light of the view taken by the Gujarat High Court (supra-6) wherein, they held any petition for amending the pleadings should be liberally construed. As far as this case is concerned the claimant himself filed exhibit A-3, the salary certificate. In fact the learned Single Judge proceeded on the assumption that the Court has to take not only the circumstances prevailing at the time of accident but also other attendant circumstances that are likely to take place in future.

22. As the learned judge reiterated his view in judgments of the three Division Benches and normally the matter should have been referred to a Full Bench for an authoritative pronouncement. But we have not chosen that course as the judgment of the Supreme Court in Adikonda Sethi (Died) through L.Rs and Anr. v. Palaniswamy Saran Transport and Anr. (5 supra) clinched the issue wherein it

has held that no Court is competent to grant higher compensation than the amount claimed by the claimant and as the Division Bench did not refer to the Judgments; it has not considered (the Judgment) in supra-5 as well as the Judgment of a Division Bench of this Court in supra-7 and the Full Bench Judgment of the Gujarat High Court in supra-6 while reiterating the view taken by the learned Judge in *Rajendra Oil Mill and Refinery Vs. State of Andhra Pradesh*, .

23. In the result, the LPA is allowed and the liability of the appellant is restricted to the claim of the claimant i.e., Rs. 1,00,000 with 12% interest from the date of filing of the petition.

24. Lastly the Counsel for the appellant contends that in the light of the latest Full Bench judgment of this Court reported in *General Manager, APSRTC and Ors. v. Sangum Bhagyamma and Anr.* 2001 (5) ALT 132 the interest cannot be awarded more than 9% and as such the interest awarded in this case may be restricted to 9%. But as no objection was taken for awarding 12% interest in the grounds of appeal we cannot permit the counsel to raise that contention at this stage. Accordingly the contention is rejected and the L.P.A. is allowed.