

(2013) 12 AP CK 0112
In the Andhra Pradesh High Court
Case No : L.P.A. No. 264 of 2001

Mandava Lakshminarayana and Another	APPELLANT
Vs	
K.V.S.S. Mallikarjuna Rao and Another	RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) ACJ 1739 : (2014) 3 ALD 395 : (2014) 2 ALT 683

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : K. Ananda Rao, for the Appellant; G. Subhash, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This is an unfortunate case, where a poor couple, who lost their only son, in an accident, have been accorded the treatment, which lacks grace, humanity, and their misery was made to remain for the past several decades. The son of the appellants, by name, Srinivasa Rao, was employed as a Cleaner on a Bus, bearing No. AIK 5193, owned by the 1st respondent and insured with the 2nd respondent, on a monthly salary of Rs. 800/-. He was just aged 23 years. On 08.06.1990, the bus started from Vijayawada with pilgrims for Tirupathi. At 11.30 p.m., when the bus reached Rajepalem Donka, within the limits of Martur Police Station, the driver of the bus made an attempt to overtake a lorry, which was going in the same direction. In the process, the bus dashed against the lorry and due to that impact, the door of the bus fell down, and Srinivasa Rao received multiple injuries. He was shifted to Government General Hospital, Guntur, and while undergoing treatment, he died on the next day.

2. The appellants filed O.P. No. 236 of 1990 before the Motor Accidents Claims Tribunal, Ongole. It was pleaded that the death of the deceased occurred, on account of the rash and negligent driving on the part of the driver of the bus. The 1st respondent remained ex parte. The O.P. was contested by the 2nd respondent alone. It was pleaded that the bus was going at a moderate speed

and the accident occurred, on account of the negligence on the part of the driver of the lorry. The fact that Srinivasa Rao was employed as a Cleaner was not disputed. However, it was mentioned that there is no need to employ a Cleaner on a tourist bus and that the policy does not cover the risk of a Cleaner.

3. Through its order, dated 22.04.1991, the Tribunal awarded a sum of Rs. 51,000/-, as compensation. The income of the deceased was taken at Rs. 370/-; annual contribution to the family at Rs. 2,400/-, and multiplier "15" was applied.

4. The 2nd respondent filed A.A.O. No. 2072 of 1992 before this Court. It was pleaded that the O.P. was filed under wrong provision and that the compensation awarded by the Tribunal is excessive. A learned Single Judge of this Court allowed the appeal and has set aside the award passed by the Tribunal. Hence, this appeal under Clause 15 of the Letters Patent.

5. Sri K. Ananda Rao, learned counsel for the appellants, submits that the learned Single Judge was not clear as to the basis on which he has set aside the order passed by the Tribunal. He contends that no provision of law was cited, nor any specific reason was assigned, for setting aside the order. He submits that whether one goes by the minimum wages prescribed by the Government for the post of Cleaner, or the actual income that was being earned by the deceased, a higher amount of compensation ought to have been awarded. According to him, the obligation on the part of an insurer of a vehicle in respect of death or injuries to a person on a vehicle arises u/s 147 of the Motor Vehicles Act (for short "M.V. Act"). Learned counsel submits that the amount of compensation awarded by the Tribunal is too meagre.

6. Sri G. Subhash, learned counsel for the 1st respondent, on the other hand, submits that the appellants failed to prove that their son was employed as a Cleaner, and at any rate, the policy taken out by the 1st respondent did not cover the liability towards death or injuries of a Cleaner. He contends that the order passed by the learned Single Judge does not warrant any interference.

7. The fact that the deceased died in the accident that occurred on 08.06.1990, was not at all in dispute. Crime No. 65 of 1990 was registered in P.S. Martur, in relation thereto and inquest report was also filed. Since the 2nd respondent denied the liability, the Tribunal framed the following two points for its consideration:

i) Whether the death of the deceased was caused by accident arising out of and in the course of his employment?

ii) Whether the petitioners are entitled to claim the compensation and if so, to what amount and from whom?

8. The 1st appellant deposed as P.W. 1 and one Ch. Sreekanth was examined as P.W. 2. The First Information Report and inquest report were filed as Exs. A. 1 and A. 2. No oral evidence was adduced by the respondents and a copy of policy was filed as Ex. B. 1. The Tribunal recorded a finding to the effect that the death

of the deceased occurred, on account of the rashness on the part of the driver of the bus and allowed the appeal, and awarded a sum of Rs. 51,000/-, as compensation. The driver was not party to the proceedings and the owner of the vehicle did not file any appeal. The 2nd respondent filed A.A.O. No. 2072 of 1992 before this Court against the order of the trial Court. The principal ground urged by the 2nd respondent was that a wrong provision was invoked. Learned Single Judge did not frame any points for consideration, and allowed the appeal.

9. In view of the extensive submissions made by the learned counsel for the parties, the points that arise for consideration before this Court are as to,

i) Whether the deceased was employed as a Cleaner on the vehicle and Ex. B. 1 covers any risk to him? and

ii) Whether the appellants are entitled for enhancement of the compensation?

Point No. (i):

10. The appellants specifically pleaded that their son was employed as a Cleaner on the monthly salary of Rs. 800/-, comprising of pay of Rs. 600/- and batta of Rs. 200/-, with the owner of the bus. The only person, who could have refuted that plea, was the 1st respondent. He did not file any counter. The 2nd respondent also did not seriously dispute the plea of the appellants. Further, in case they wanted to oppose that plea, the only course open to them was to examine the 1st respondent. They did not do so. Their contention was mainly to the effect that the accident occurred on account of the negligence on the part of the driver of the lorry and that there is no necessity to employ a Cleaner for a bus.

11. The first part of the contention does not merit consideration. Neither the driver, nor the owner contested the matter. The finding of the Tribunal is based on evidence.

12. As regards the second aspect, it is a matter of common knowledge that in heavy transport vehicles, invariably Cleaners are appointed. Atleast in the case of goods vehicles, once the goods are loaded, the driver can drive the vehicle without the assistance of anyone. In case of heavy transport vehicles, every precaution, including proper upkeep of the vehicle, is to be taken by the Cleaner. For all practical purposes, he acts as a care taker of the vehicle, both when the vehicle is on motion and when it is parked. A perusal of Exs. A. 1 and A. 2 clearly demonstrate that the deceased was working as a Cleaner and he sustained injuries in the accident. Further, there is nothing in law, which prohibits appointment of Cleaners. On the other hand, the State Governments recognized such employment and issued orders from time to time prescribing the minimum wages for such posts in exercise of powers under the Minimum Wages Act.

13. Learned Single Judge proceeded on the assumption that the policy is not required to cover any risk of a Cleaner on a heavy vehicle. The order passed in the A.A.O., is very brief and the portion that is devoted to unsettle the order

passed by the Tribunal is hardly in two or three sentences. The contention as well as the discussion in relation thereto reads:

To appreciate the contentions raised by the learned counsel for the appellant Mrs. A. Anasuya, I have gone through the material placed before me and also the judgment of the trial Court, in which the claim petition was filed u/s 167 of the M.V. Act and it was held by the tribunal below that the deceased was a cleaner and earning an amount of Rs. 800/- and aged about 23 years at the time of occurrence of the accident.

As far as the first ground is concerned, the court cited a wrong section and it does not vitiate the right of the claimant to seek appropriate remedy. Therefore, I am rejecting the first ground. As far as the second ground is concerned, the policy does not contemplate covering the Cleaner. Therefore, the compensation awarded by the tribunal below with a finding that the cleaner was not covered by the Insurance Policy is illegal and accordingly the award was passed by the Tribunal is set aside.

14. It is only the underlined portion that can constitute the basis for setting aside the order of the Tribunal. With due respect to the learned Single Judge, the approach was totally uncalled for and contrary to the provisions of the M.V. Act. Mere perusal of Section 147 thereof would have made him to know that the taking out of a policy to cover the risk of the persons employed on the vehicles is mandatory, and the minimum coverage should be to the extent it is provided for under the Workmen's Compensation Act (for short "W.C. Act"). A casual observation and a consequential setting aside of the order, which itself granted too meagre a compensation; has rendered the appellants virtually destitutes. We accordingly answer Point No. (i) in favour of the appellants.

Point No. (ii):

15. Learned counsel for the appellants submits that the amount awarded by the Tribunal is too meagre and it was the result of the improper findings on the income of the deceased and application of a wrong multiplier. An objection is raised by the learned counsel for the 2nd respondent stating that no appeal was filed for enhancement of compensation. If one goes by the purport of Rule 33 of Order XLI C.P.C., it becomes clear that even if the subject-matter of appeal is limited to any particular aspect, the Appellate Court does have the power to address other issues, which are germane to the appeal. Further if one takes into account social security and beneficial measure introduced by the Parliament into the M.V. Act, the endeavour should be to determine the compensation that is payable to the injured or the dependants of the deceased. Technical rules of procedure should not come in the way. If a victim of an accident or his dependants, are entitled for a particular sum, it is the duty of the Tribunal to determine the same in accordance with law. There are several precedents handed out by the Hon"ble Supreme Court and High Courts, in this behalf.

16. In the instant case, the appellants specifically pleaded that their son was

employed as a Cleaner with monthly salary of Rs. 800/-, which comprised of Rs. 600/- towards salary and Rs. 200/- towards batta. The Tribunal took into account G.O. Ms. No. 301, Labour, Employment and Nutrition and Technical Education, Lab. II, dated 14.08.1985, issued under the Minimum Wages Act, wherein the monthly wages for the post of Cleaner are stipulated at Rs. 370/-. The accident took place in the year 1990 i.e. five years after the said G.O. was issued. There was a periodical increase of atleast 10%, per annum. By any standard, the minimum wages would have been Rs. 500/- in the year 1990. It is necessary to note that the minimum wages do not include the daily batta that is paid by the employer. Even if the emoluments of the deceased, including the batta, are taken at Rs. 600/-, his contribution to his parents would be at Rs. 400/-, per month, after deducting one-third towards his personal expenditure. The loss of dependency for the appellants would be Rs. 4,800/- per year. The Tribunal applied the multiplier "15" by taking into account the age of the 2nd appellant i.e. the mother of the deceased. If that multiplier is applied, the loss of dependency would be Rs. 72,000/-. Non-pecuniary damages were awarded at Rs. 15,000/-. The same can be maintained and if that is added the compensation would be Rs. 87,000/-. Even under the W.C. Act, the amount to be awarded u/s 4 of the W.C. Act, on account of the death of a workman, is Rs. 80,000/-. That Act does not prohibit award of any higher amount under the M.V. Act. Section 167 of the M.V. Act provides for this.

17. Hence, the appeal is allowed and the compensation is enhanced from Rs. 51,000/- to Rs. 87,000/-. Out of this, the 1st appellant shall be entitled to Rs. 40,000/- and the 2nd appellant to Rs. 47,000/-. The enhanced amount shall carry interest at 7.5%, per annum. Two months time is granted to respondents 1 and 2 to deposit the amount. We direct the Tribunal to take necessary steps to inform the appellants about the enhancement of the compensation, procure their presence through Process Server, identify them and ensure that the amount is paid directly to their account. There shall be no order as to costs. The miscellaneous petition filed in this appeal shall stand disposed of.