
(2014) 08 AP CK 0146

In the Andhra Pradesh High Court

Case No : M.A.C.M.A.M.P. No. 2863 of 2014 and M.A.C.M.A. No. 913 of 2007

Meesala Nageswaramma and Others

APPELLANT

Vs

Siva Cheederla and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166, 173

Citation : (2015) ACJ 2554 : (2015) 3 ALT 702

Hon'ble Judges : C. Praveen Kumar, J.

Bench : Single Bench

Advocate : N.S. Bhaskara Rao, for the Respondent

Final Decision : Allowed

Judgement

C. Praveen Kumar, J.?Grant of inadequate compensation in M.V.O.P. No. 221 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur, made the claimants to prefer the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), seeking enhancement of the same.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

3. The facts in issue are as under:

The claimants, who are the wife and children of one Meesala Lakshmana Rao, filed a petition under Section 163-A and 166 of the Act, claiming compensation of Rs. 10,00,000/- for the death of the deceased Meesala Lakshmana Rao in a road accident that took place on 14.12.2004. It is stated that on the fateful day at about 05.45 a.m. while the deceased was going by walk near Railway Station, Guntur, an Auto bearing No. AP 7 TT 2391 driven by its driver in a rash and negligent manner without observing traffic rules and regulations came from behind and dashed the said Lakshmana Rao. As a result of which the deceased fell down and sustained grievous injuries on his head and other parts of the body.

Immediately there after, the injured was shifted to Government General Hospital, Guntur, where he succumbed to the injuries while taking treatment. In respect of the above incident a criminal case was also registered at Kothapet Police Station against the driver of the auto. The averments in the petition also disclose that the deceased was working in the Medical Section of the Railway Department at Guntur and was getting a salary of Rs. 6,535/- per month. Since the accident took place due to rash and negligent driving by the driver of the first respondent and as the said vehicle was insured with the second respondent, the claim petition came to be filed against both the respondents making them jointly and severally liable to pay compensation of Rs. 10,00,000/-.

4. The first respondent, who is the owner of the vehicle, filed the counter denying the manner in which the accident took place and also the age, income and avocation of the deceased. It was further averred that there was no negligence on the part of the driver of the first respondent and that the driver was having a valid licence to drive the vehicle. Since the policy was in force at the time of the accident it is stated that the second respondent alone is liable to pay compensation.

5. The second respondent (National Insurance Company Limited) filed its counter contending that there was a contributory negligence on the part of the deceased and as such the insurance company alone cannot be fastened with liability to pay compensation. It also disputed the age, income and avocation of the deceased. In any event it is stated that the claim made is excessive and exorbitant.

6. On the basis of the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of Auto bearing No. AP 7 TT 2391?

2. Whether the petitioners are entitled to compensation and if so, to what amount and against whom?

3. To what relief?

7. In support of the claim, the claimants examined PWs.1 to 3 and got marked Exs.A1 to A7 and Ex.X1. The respondents examined RW.1 and got marked Exs.B1 and B2.

8. After analyzing the evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the crime vehicle. Since the first petitioner, who is the wife of the deceased, was getting family pension of Rs. 2,509/-, the Tribunal held that the claimants are entitled to a sum of Rs. 25,000/- towards loss of love and affection, Rs. 15,000/- towards loss of pleasure of marital life and a sum of Rs. 2,000/- towards funeral expenses. Thus in all awarded Rs. 42,000/- with interest at 7.5% p.a. from the date of petition till the date of realisation. Challenging the same the present appeal is filed by the claimants.

9. Pending the present appeal, the appellants herein filed an application M.A.C.M.A.M.P. No. 2863 of 2014 for amendment of the cause title in the judgment as the Tribunal made a mistake in showing the second respondent as United India Insurance Company Limited, Guntur, instead of National Insurance Company. The counsel for the insurance company opposed the same contending that M.A.C.M.A. itself is liable to be dismissed on the ground of making United India Insurance Company Limited as a party to the proceedings when it has nothing to do with the claim. Non-joinder of necessary parties in this appeal appears to be the ground on which this M.A.C.M.A. is sought to be dismissed.

10. Dealing with the preliminary objection raised, it is to be noticed that the claimants have filed O.P. No. 221 of 2005 showing National Insurance Company Limited as the insurer of the crime vehicle. RW.1 who was examined on behalf of the insurance company deposed that he was working as an Assistant in respondent No. 2 insurance company, which would obviously mean that it is only a National Insurance Company Limited. The insurance policy which was produced on record by the respondent as Ex.B2 is that of National Insurance Company Limited. The decree which has been passed by the Tribunal was also against the owner of crime vehicle and National Insurance Company Limited. It appears that a typographical error has crept in whereunder the Tribunal referred the name of the second respondent as United India Insurance Company Limited in the cause title of the main judgment. The same mistake was carried out while filing the appeal before this Court. Realising the mistake, the claimants filed the present M.A.C.M.A.M.P. No. 2863 of 2014 seeking amendment of the cause title.

11. From the narration of events it is clear that the Tribunal has committed a mistake in showing the second respondent/insurer as United India Insurance Company Limited instead of National Insurance Company Limited. However in the decree the name of the correct insurer was mentioned. In fact, the counter to the O.P. was also filed by National Insurance Company. The mistake done by the Tribunal was carried out in the appeal filed by the appellant. Therefore, it cannot be said that the said mistake goes to the root of the matter thereby denying compensation to the claimants. Hence, the M.A.C.M.A.M.P. No. 2863 of 2014 is ordered substituting the name of the second respondent as National Insurance Company Limited in place of United India Insurance Company Limited in the grounds of appeal.

12. Coming to the case on hand, the finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the insurance company or by the owner of the vehicle.

13. The issues that arise for consideration are

(i) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

and

(ii) Whether the finding of the Tribunal with regard to denying the loss of dependency on the ground that the first petitioner was getting family pension is sustainable?

14. After analyzing the evidence of PW.1 and PW.3 (Office Superintendent, South Central Railway, Guntur Division) and Ex.X1 copy of Service Register of the deceased, the Tribunal came to the conclusion that the first petitioner was getting a sum of Rs. 2,509/- per month as family pension. Since the contribution of the deceased to the family would be equal to the amount which the first petitioner was getting as family pension, the Tribunal held that the claimants cannot be treated as dependents on the income of the deceased and accordingly did not award any compensation under the head "loss of dependency".

15. The learned counsel for the claimants mainly submits that the said finding is totally contrary to the law and the same needs to be modified. On the other hand, the learned counsel for the insurance company submits that there is nothing illegal in the said order as the Tribunal rightly came to conclusion that the claimants are not entitled to any amount under the head "loss of dependency".

16. The issue as to whether Provident Fund, Pension and Insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" and liable for deduction came up for consideration before the Apex Court in Vimal Kanwar and Others Vs. Kishore Dan and Others, . After referring the judgment of the Apex Court in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, the Apex Court held that the Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction.

17. It would be appropriate to refer the finding of the Apex Court in Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . In Para No. 35, the Apex Court held as under:

"Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the

two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual."

18. Applying the same analogy and the principles laid down in the judgments referred to above, receipt of family pension by the first petitioner, who is the wife of the deceased, cannot be termed as "pecuniary advantage" warranting while determining the compensation under the provisions of the Motor Vehicles Act. The Apex Court categorically held that the income tax which is payable on the income received alone is liable to be deducted from the salary, for the purpose of arriving at the income of the deceased. While assessing the income of the deceased, the Tribunal held that the deceased being an employee in Medical Section of South Central Railway was getting net salary of Rs. 3,345/- as on the date of the accident. But as seen from the judgment referred to above and also the judgment of the apex Court in Manasvi Jain Vs. Delhi Transport Corporation, it is not the net salary which has to be taken into consideration for determining the loss of dependency, the gross salary less the deduction towards income tax made thereon alone should be taken into consideration for the purpose of calculating the loss of dependency. The finding of the Tribunal itself is to the effect that the deceased was getting Rs. 6,535/- per month as gross salary in view of Exs.A6 and A7, the salary and service certificates. The contents of these two documents were spoken to by PW.3, the employer of the deceased, who was working as an Office Superintendent in South Central Railway, Guntur Division.

In the absence of any evidence with regard to the income tax to be deducted, the monthly income of the deceased, for the purpose of calculating the loss of dependency, can be fixed at Rs. 6,535/-. Insofar as the age of the deceased is concerned, the Tribunal held that the deceased was aged about 48 years though in the claim petition it was shown as 43 years. As the said finding was based on the declarations made in the service register (Ex.X1) wherein the date of birth of the deceased was shown as 05.07.1957, the same can be accepted.

19. At this stage, an objection was raised stating that since the claim-petition was under Section 163-A of the Act awarding compensation by taking the income of the deceased at more than Rs. 40,000/- per annum is impermissible. In support of his plea, the learned counsel for the insurance company took me through the first paragraph of the judgment wherein it was mentioned that the claim petition was filed under Section 163-A of the Act. But the same appears to be incorrect for the reason that the claim petition as well as the decree refer to Section 163-A and 166 of the Act.

20. The contents of the first paragraph of the Judgment wherein it was mentioned that the application was filed under Section 163-A of the Act appears to be incorrect, as at no other place there was any reference to filing of an application under Section 163-A of the Act only. Further, the claimants though mentioned Section 163-A and 166 of the Act in their claim petition but did not opt for trying of their case under Section 163-A of the Act only. Since no option was exercised, technicalities should not come in the way of the Court in doing justice to the parties. Since both the sections are mentioned and evidence has been adduced to plead their case no prejudice would have been caused to the respondents. Further the provisions of the Motor Vehicles Act, 1988 ("Act" for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable.

21. That being the position and as the deceased was aged about 48 years at the time of the accident and was a salaried employee working in Medical Section of the South Central Railway, the future prospects of the deceased also have to be taken into consideration for calculating the loss of dependency. Since the deceased was aged about 48 years having fixed income, 30% of actual salary should be added to the actual income of the deceased for the purpose of calculating the loss of dependency in view of the Judgments of the Apex Court in *Sarla Verma* 2013 ACJ 1441 and *Rajesh and Others Vs. Rajbir Singh and Others*, . If the income of the deceased is taken at Rs. 6,535/- and when 30% of it is added to the income, the monthly income would come to Rs. 8,495/- (Rs.

6,535/- + Rs. 1960/-) which is rounded off to Rs. 8,500/-. Though the claimants are four in number but since claimant No. 2 was aged about 24 years having sufficient income of his own, it would be appropriate to deduct 1/3rd of the amount towards the personal and living expenses of the deceased. If 1/3rd is deducted, the contribution of the deceased to the family would be Rs. 5,667/- per month. As the age of the deceased was 48 years at the time of accident, the Tribunal adopted multiplier "13" which needs no interference. Applying multiplier "13", the total loss of dependency would be Rs. 5,667/- x 12 x 13 = 8,84,052/-.

22. The amount of Rs. 42,000/- awarded towards conventional heads appears to be reasonable in view of the judgment of the Apex Court in Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. and Others, and Kishan Gopal and another V. Lala and others 2014 (1) An.W.R. 58 (SC). Thus, in all, the petitioners are entitled to Rs. 9,26,052/-.

23. Accordingly the appeal is allowed by enhancing the compensation from Rs. 42,000/- to Rs. 9,26,052/-. The enhanced amount will carry an interest at 6% p.a. from the date of petition till the date of realization. The enhanced amount shall be apportioned in the manner directed by the Tribunal.

24. There shall be no order as to costs. The miscellaneous petitions, if any pending, shall stand closed.