

(2014) 01 AP CK 0031
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 202 of 2009

Mesram Chinnu and Another

APPELLANT

Vs

M. Douloth Rao and Another

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2014) 01 AP CK 0031

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

Bench : Single Bench

Advocate : S. Surender Reddy, for the Appellant; Ravi Shankar Jandhyala, for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Challenging the award dated 28.11.2008 in M.V.O.P. No. 477 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short "Tribunal"), the claimants preferred the instant M.A.C.M.A on the ground that compensation awarded by the Tribunal as low and inadequate. The factual matrix of the case is thus:

a) The claimants are the parents of deceased boy- M. Nagender, aged 5 years and they are residents of Muthnoor Village, Indervelli Mandal of Adilabad District. Their case is that on 09.11.2004, at about 5:30 p.m., when the deceased was standing by the side of the road near their house, the driver of the auto bearing No. AP 01 KA T/R 186 drove the auto at high speed and hit the deceased and thereby the boy suffered fatal injuries and subsequently died in the Church Hospital in that local area. The claimants pleaded that the accident was occurred due to the fault of the driver of the auto rickshaw. They further pleaded that the deceased was a student and a bright boy and due to his abrupt death, he lost prospects in the life and they lost their future supporter. On these pleas, the claimants filed M.V.O.P. No. 477 of 2005 and claimed compensation of Rs. 1,50,000/- under various heads against respondent Nos. 1 and 2 who are the

owner and insurer of the offending auto rickshaw.

b) Respondent Nos. 1 and 2 filed counters and opposed the claim.

c) During trial PWs.1 to 3 were examined, Exs. A.1 to A.5 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex. B.1.

d) Perusal of the judgment would show that the Tribunal having regard to the eye witness account of PW.2 and supporting documents like Ex. A.1- F.I.R., Ex. A.2-inquest report and Ex. A.4- charge sheet held that the accident was occurred due to the fault of the auto driver. Coming to the quantum of compensation, the Tribunal has observed that the deceased was an infant boy of 5 years and a non-earning member. Therefore, to assess compensation, the Tribunal having relied upon the decisions reported in Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, and Lata Wadhwa and Others Vs. State of Bihar and Others, granted compensation of Rs. 1,11,500/- as follows:

1.

Conventional compensation u/s 140 of M.V. Act

Rs. 50,000/-

2.

Loss of Estate

Rs. 7,500/-

3.

Funeral expenses

Rs. 2,000/-

4.

Transportation charges

Rs. 2,000/-

5.

Loss of notional future earnings

Rs. 50,000/-

TOTAL

Rs. 1,11,500/-

e) It may be noted that in the process of arriving at the above compensation, the Tribunal declined to consider the decisions relied upon by the claimants on the ground that the deceased in those cases were the children aged 9 and 13 years and so notional income of Rs. 15,000/- as applied in those cases cannot be

applied to the instant case since the deceased in the instant case was aged 5 years. Instead, as already stated, the Tribunal followed the case of Oriental Insurance Company Limited v. Syed Ibrahim and others (Supra), which was relating to the death of a child aged 7 years. The Tribunal observed that as per the above decision, the compensation for the death of a child cannot be assessed as in the case of an adult. Hence, the appeal by claimants for enhancement of compensation.

2. Heard arguments of Sri S. Surender Reddy, learned counsel for appellants/claimants. No representation for respondents.

3. Fulminating the award of the Tribunal, learned counsel for appellant argued that the Tribunal erred in not applying notional income of Rs. 15,000/- per annum to the deceased for computation of loss of future earnings of the deceased. He argued that though the deceased was an infant and a non-earning member by the date of his death, still the Tribunal ought to have taken his notional income as Rs. 15,000/- p.a. and ought to have computed compensation through multiplier method. Instead, the Tribunal granted only a lump sum amount of Rs. 50,000/- as notional loss of earnings which is impermissible under law. He thus prayed to review the compensation under this head and grant enhanced compensation. In this context, he relied upon a decision reported in R.K. Malik and Another Vs. Kiran Pal and Others, .

4. In the light of above argument, now the point for determination in this appeal is:

Whether the compensation granted by the Tribunal is just and reasonable?

5. POINT: It may be noted that the claimants before Tribunal relied upon the following decisions: a) New India Assurance Co. Ltd. Vs. Satender and Others, b) Manju Devi and Another Vs. Musafir Paswan and Another and d) National Insurance Company Limited Vs. Pittala Ramulu and Others, .

6. It may be noted that in the case of New India Assurance Company Limited v. Satender and others (Supra), for the death of a boy of 9 years, the Hon''ble Apex Court applied multiplier method by taking his notional income as Rs. 15,000/-. In the case of Santosh Rani v. Ranjith Singh (Supra), when the Tribunal awarded Rs. 50,000/-, Hon''ble Apex Court fixed a lump sum compensation of Rs. 2,50,000/- with subsequent interest and costs. In the case of Manju Devi and another v. Musafir Paswan and another (Supra), for the death of 13 years old boy, Hon''ble Apex Court applied multiplier method by taking his notional income as Rs. 15,000/- p.a. In the case of National Insurance Company Limited v. Pittala Ramulu and others (Supra), for the death of boy aged about one year, our High Court has applied multiplier method by taking his notional income as Rs. 15,000/- p.a.

7. However as already stated supra, the Tribunal did not follow the above decisions on the observation that the deceased in some of those cases were aged

between 9 and 13 years whereas the deceased in the instant case was aged 5 years. Instead the Tribunal has relied upon the decision reported in the case of Oriental Insurance Company Limited v. Syed Ibrahim and others (Supra) wherein another decision of Supreme Court reported in the case of Smt. Lata Wadhwa and others v. State of Bihar and others (Supra) was discussed and relied. In the case of Oriental Insurance Company Limited v. Syed Ibrahim and others (Supra), the death was that of a child aged 7 years. The Tribunal awarded sum of Rs. 51,500/- as compensation on the ground that the child had no income. However, High Court of Karnataka in an appeal filed by the claimants enhanced the compensation to Rs. 1,52,000/-. In the appeal preferred by the Insurance Company, Hon''ble Apex Court after discussing the principles to be followed in assessing the compensation in child death cases had maintained the compensation awarded by the Tribunal. In that case, the multiplier system was not made applicable and notional income of Rs. 15,000/- was not taken for the death of child. The Tribunal followed the aforesaid decision and granted compensation of Rs. 1,11,500/- under different heads as stated supra. In view of Tribunal''s following the latest decision of Hon''ble Apex Court wherein the deceased was 7 years, whose age was proximate to the age of the deceased in the instant case, the compensation awarded by the Tribunal cannot be found fault.

8. It may be noted that the decision reported in R.K. Malik and another v. Kiran Pal and others (Supra) relied upon by the appellant can be distinguished on facts. That was a case of death of 29 school going children. When those children were proceeding to the school in a bus, the said bus overran the road and broke the railing and drowned in Yamuna River. In that ghastly accident, 29 children died. Some children were in the age group of 10 to 15 years; some in the age group of 15 to 18 and three children were in the age group of less than 10 years. In that context, the future prospects were also considered and compensation was fixed for them. In the instant case, the deceased was only a child of 5 years and there is no record to show that he was going to school. So the said decision cannot be applied to the instant case. In the result, I find no merits in the appeal and the same is accordingly dismissed. No costs.

Miscellaneous applications if any pending in this appeal, shall stand dismissed.