
(2007) 08 AP CK 0062
In the Andhra Pradesh High Court
Case No : CMA No. 1243 of 2004

National Insurance Co. Ltd.	Vs	APPELLANT
P. Saraswathamma and Others		RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 140, 141(1), 141(3), 145
Penal Code, 1860 (IPC) — Section 304A, 337
Workmens Compensation Act, 1923 — Section 4

Citation : (2008) 2 ALD 565 : (2008) 3 ALT 576

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : N.S. Bhaskara Rao, for the Appellant; R. Kameswara Rao, for the Respondent

Judgement

B. Seshasayana Reddy, J.—The National Insurance Company aggrieved by and dissatisfied with an order dated 9.9.2002 passed in M.A.T.O.P. No. 47 of 1999, on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge at Khammam, is the appellant before me.

2. Respondent No. 1 is widow, respondent No. 2 is daughter and respondent No. 6 is mother of Appala Swamy. The said Appala Swamy and some others were engaged by P. Easwar Rao-5th respondent herein, owner of the lorry bearing No. AP-16-T-180, for loading and unloading of cement poles. On 27.11.1998 Appala Swamy and co-labourers loaded cement poles on the lorry bearing No. AP16-T-180 and sat on the load. The lorry driven by one B. Srinu-4th respondent herein was proceeding from Paloncha to Bhadrachalam and on nearing NTR Colony, Bhadrachalam and while negotiating a curve, the driver lost control over the vehicle on account of his rash and negligent driving and as a result the lorry turned turtle and Appala Swamy and other co-labourers came under cement poles. Appala Swamy (hereinafter referred to as the deceased) suffered serious injuries for which he succumbed at the spot of the accident. The Station House Officer, Bhadrachalam (Rural) Police, registered a case in Crime No. 57 of 1998 u/

s 304A and 337 I.P.C against the driver of the lorry. Due to sudden death of the deceased, his dependents viz., his wife, daughter and mother were deprived of his earnings. Hence, the wife and the daughter filed claim petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 2,00,000/-. Since the mother of the deceased did not join them, she was shown in the array of respondents in the claim petition. More precisely R-1 was driver, R2 was the owner and R3 was the insurer of the Crime Vehicle and whereas R-4 was the mother of the deceased in O.P. No. 47 of 1999. The driver and the owner of the crime vehicle remained ex parte. The insurer of the vehicle and the mother of the deceased filed counters.

3. Insurance Company disputed the income of the deceased and also rash and negligent driving of the driver of the vehicle. It also disputed the driver holding valid driving licence, and lorry holding road permits and its roadworthiness as on the date of the accident.

4. Mother of the deceased filed counter contending that she is dependant on the earnings of deceased and she is aged about 80 years and thus sought for allotment of a share in the compensation.

5. The Tribunal settled the following issues:

1. Whether the deceased Pantala Appala Swamy died due to the rash and negligent driving of the lorry bearing NO. A.P. 16-T 180 by its driver/ R-1?

2. Whether the petitioners are entitled to any compensation. If so, to what amount and from which of the respondents?

3. To what relief?

6. On behalf of the claimants, claimant No. 1 i.e., widow of the deceased was examined as PW 1 and five documents were marked as Exs.A1 to A5. On behalf of the mother of the deceased, neither ocular nor documentary evidence was adduced. The insurance company marked copy of the policy as Ex.B1 on its behalf.

7. The Tribunal, on considering the evidence brought on record and on hearing Counsel for the parties, came to the conclusion that the accident occurred due to rash and negligent driving of the crime vehicle and that the claimants as well as 4th respondent (mother of the deceased) together entitled to Rs. 1,80,000/- as compensation. Interest at the rate of 12% has been awarded on the compensation from the date of the petition till the date of award and thereafter at 6% to the date of realization. The compensation has been apportioned by the Tribunal among the claimants and 4th respondent (mother) as hereunder.

Claimant No. 1/widow Rs. 1,05,000/- with interest accrued thereon

ClaimantNo. 2/daughter Rs. 25,000/- with interest accrued thereon

Claimant No. 3/son Rs. 25,000/- with interest accrued thereon

Respondent No. 4/mother Rs. 25,000/- with interest accrued thereon

8. The order passed by the Tribunal in M.A.T.O.P. No. 47 of 1999 is under challenge in this appeal by the National Insurance Company.

9. This appeal came to be admitted on 19.4.2004. Interim stay of the operation of the order impugned in the appeal came to be granted subject to the appellant-insurance company depositing half of the decretal amount together with interest and costs on 14.6.2004 vide C.M.P. No. 9429 of 2004. Claimant No. 1-widow filed MACMAMP. No. 1201 of 2007 with a prayer to vacate the interim stay granted in CMP No.9429 of 2004. When the vacate stay petition came up for consideration, with the consent of the parties, the appeal itself is taken up for final hearing.

10. Heard learned Counsel appearing for the appellant/Insurance Company and learned Counsel appearing on behalf of the respondent Nos. 1 to 3-claimants.

11. Learned Counsel appearing for the appellant-insurance company submits that the risk of persons engaged by the owner of the vehicle in loading and unloading was not covered under the policy and therefore no liability could be fastened on the insurer to pay the compensation. A further submission has been made that an amount of Rs. 50,000/- paid under "No Fault Liability" by virtue of the order passed in O.P. No. 620 of 2000 needs to be given due credit towards the amount of compensation required to be paid by the appellant-insurance company u/s 166 of the Motor Vehicles Act, 1988. He would also contend that the multiplier of 15 adopted by the Tribunal is on high side and the same is liable to be reduced to 10.45 as per the multiplier table given in Bhagwandas Vs. Mohd. Arif, .

12. Learned Counsel appearing for the respondent Nos. 1 to 3-Claimants submits that the Tribunal considered the nature of occupation of the deceased and various other factors and awarded just and reasonable compensation of Rs. 1,80,000/- and therefore, the order passed by the Tribunal is not required to be interfered in this appeal.

13. The appellant-insurance company does not seriously dispute a finding recorded by the Tribunal on the issue with regard to rash and negligent driving of the driver of the vehicle.

14. In view of the contentions advanced by the appellant and the claimants, the following issues fell for consideration in this appeal:

(1) Whether the risk of the deceased was covered under the policy?

(2) Whether the amount paid under no fault liability is required to be given due credit while awarding amount u/s 166 of the Motor Vehicle Act.?

(3) Whether the compensation granted by the Tribunal is required to be modified?

15. Issue No. 1: Section 147 of the Motor Vehicles Act, 1988 deals with requirement of policy and limits and it is thus:

147. Requirements of policies and limits of liability:--(1) in order to comply with

the requirements of this Chapter, a policy of insurance must be a policy which-

- (a) is issued by a person who is an authorized insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
- (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.
- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required,-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of , or bodily injury to , any such employee.

- (a) engaged in driving the vehicle, or
- (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it is a goods carriage, being carried in the vehicle, or
- (d) to cover any contractual liability.

16. It may be true that the Motor Vehicles Act, insofar as it relates to claim for compensation arising out of the accident, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. The relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation, which is still based on a tortious liability. The Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third-party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an

insurance company to be taken out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for insurance against third-party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorized insurer; or which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14.11.1994, injury to the owner of goods or his authorized representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of death, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy.

17. The respondent Nos. 1 to 3-claimants have specifically pleaded in the petition that the deceased was engaged by the owner of the vehicle for loading and unloading and he was travelling in the lorry during the course of the employment as on the date of the accident. The insurance company did not choose to adduce any contra evidence. PW1 who is the claimant No. 1 deposed before the Tribunal in conformity with the averments in the petition. In view of the evidence adduced by the claimants, it is to be held that the deceased travelled in the lorry during the course of employment. The question is whether his risk is covered under the policy issued by the appellant/insurance company in respect of the vehicle involved in the accident. Ex.B.I is the policy issued by the appellant/ insurance company. The relevant portion of the policy reads as under:

Use only for carriage of goods within the meaning of Motor Vehicle Act, 1988. The policy does not cover:

1. Use for organized racing, pace making reliability trial or speed testing;
2. Use whilst driving a trailer except the towing (other than for reward) or any one disabled mechanically propelled vehicle; or
3. Use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number coming under the purview of Workmen's Compensation Act, 1923.

It is explicit from the policy that the risk of employees not exceeding six in number coming under the purview of Workmen's Compensation Act, 1923 is covered. What is to be understood from the above terms incorporated in the policy is that the insurer undertook to cover the risk of the employees not exceeding six in number engaged by the insured. However, the liability of the insurer is limited to the extent of compensation payable under Workmen's Compensation Act, 1923. Accordingly, the issue is answered.

Issue No. 2:

18. Section 140 of M.V. Act, 1988 deals with NO FAULT LIABILITY in respect of death or permanent disability of any person. Section 166 of M.V. Act, 1988 deals with FAULT LIABILITY. u/s 141(3) of M.V. Act, 1988 if the amount payable under fault liability exceeds the amount payable under No fault liability, the award is required to be passed only in respect of excess amount. For better appreciation, I may refer Section 141(3) of M.V. Act, 1988, which reads as under:

Section 141(3) - Notwithstanding anything contained in Sub-section (1) where in respect of the death or permanent disablement of any person, the person liable to pay compensation u/s 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and-

(a) if the amount of the first mentioned compensation is less than the amount of the second mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

A plain reading of the above referred provision indicates that the amount of compensation paid u/s 140 of M.V. Act, 1988 has to be excluded from the final award made u/s 166 of M.V. Act, 1988 after the enquiry. The same point came up for consideration in Cherukuri Venkat Raju Vs. Parasa Reddy, wherein it has been held that compensation payable under NO FAULT LIABILITY has to be excluded from the final award made u/s 110(A) (equivalent to Section 166 of new Act) after the enquiry.

Issue No. 3:

19. In case of death, basis of compensation is loss of pecuniary benefits to the dependants of the deceased, which includes pecuniary loss, expenses, etc., and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for

measuring value of human life, and measure of damages cannot be arrived at by precise mathematical calculation, but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.

20. The purpose for compensation to dependents of the victims is that they may not be suddenly deprived of the sources of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation, but in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. The intention is not to over compensate.

21. In fixing the compensation the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to them by reason of death. It is also to be borne in mind that the Courts should not allow misfortune to be turned into a wind fall. In *State of Haryana and Another Vs. Jasbir Kaur and Others*, , the Supreme Court considered the words just and reasonable occurring in Sections 168 and 167 of M.V. Act, 1988 in determination of compensation and held that just and reasonable compensation does not mean a bonanza or a source of profit to the victim of the accident. It is useful to refer Para 7 of the cited judgment and it is thus:

It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be just and reasonable. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation, which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes

equitability, fairness and reasonableness, and non-arbitrary, if it is not so it cannot be just.

22. The deceased was a labour as on the date of the accident, The Tribunal assessed his earnings at Rs. 15,000/- per annum and after deducting 1/3rd of it towards personal expenses arrived his contribution to the family at Rs. 10,000/-. I do not see any flaw in the method adopted by the Tribunal in assessing the contribution of the deceased to the family.

23. Learned Counsel appearing for the appellant-insurance company submits that the Tribunal has taken the multiplier on high side. The Tribunal took 15 multiplier as the deceased was aged 45 years as per Ex.A3 post-mortem report. As per II schedule u/s 163(A), the proper multiplier in case of death of a person over 45 years is 13. Therefore, the total loss of dependency comes to Rs. 10,000/- x 13 = Rs. 1,30,000/-. Respondent Nos. 1 and 2 are entitled to Rs. 15,000/- towards loss of estate and first respondent-first claimant is further entitled to Rs. 15,000/- towards consortium. Therefore the total compensation comes to Rs. 1,60,000/- (Rs. 1,30,000/- + Rs.30,000/- = Rs. 1,60,000/-). Since, the claimants already received Rs.50,000/- under no fault liability, the same is required to be given due credit to the compensation awarded u/s 166 of the Motor Vehicles Act i.e., under fault liability in which case the total compensation payable to the claimants can be arrived at Rs. 160,000/- (-) Rs. 50,000/- = Rs. 1,10,000/-.

24. In Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, , the rate of interest on the award amount has been granted at 7.5%. The interest at that rate has been uniformly allowed by the Supreme Court as well as this Court. Hence, the award amount shall carry interest at 7.5% per annum.

25. The liability of the appellant/ insurance company is to be restricted to that arising under the Workmen's Compensation Act, 1923. The owner and the driver are liable to satisfy the remaining portion of the Award jointly and severally. u/s 4 of Workmen's Compensation Act, 1923 the amount of compensation in case of death of workman is an amount equal to 50% of monthly wages of the deceased workman multiplied by the relevant factor; or an amount of Rs. 80,000/- whichever is more. In Explanation 1 to Section 4 of Workmen's Compensation Act, 1923, it is stated that relevant factor in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of age of the workman on his last birthday immediately preceding the date on which the compensation fell due. It has come on record that the deceased was aged 45 years.

26. The relevant factor as per Schedule IV for a person over 45 years is 169.44. The portion of the Award the appellant/Insurance company required to satisfy is Rs. 1,05,900/- {Rs. 15,000/12 x 50/100 x 169.44}. The appellant/Insurance company had already paid Rs. 50,000/- towards No Fault Liability and the same

is required to be given due credit towards the amount payable under Fault Liability in which case the liability of the appellant/insurance company would come to Rs. 55,900/- with interest at 7.5 %.

27. Accordingly, the appeal is partly allowed and the award passed in MATOP. 47 of 1999 on the file of Motor Accidents Claims Tribunal--cum-I Additional District Judge, at Khammam is reduced to Rs. 1,10,000/- with interest at 7.5 % from the date of petition to the date of payment and liability of the appellant is restricted to Rs.55,900/- with interest at 7.5 % from the date of petition to the date of payment. No order as to costs.