

(2017) 05 AP CK 0002
In the Andhra Pradesh High Court
Case No : 739 of 2001

National Insurance Co. Pvt. Ltd.

APPELLANT

Vs

Parwati Bai and others

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 22](#) -
[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#) - Application for compensation

Citation : (2017) 05 AP CK 0002

Hon'ble Judges : N.K. Gupta

Bench : SINGLE BENCH

Advocate : R.V. Sharma, Ram Kishore Sharma

Final Decision : Disposed oFF

Judgement

1. The appellant Insurance Company has preferred the present appeal against the award dated 31.7.2001 passed by the Motor Accident Claims Tribunal, Shivpuri (M.P.) in Claim Case No.25/2000 whereby the compensation of Rs. 83,500/- along with interest was awarded in favour of respondents No. 1, 2 and 3 and appellant as well as respondents No.4 and 5 were made liable to pay the same jointly and severally. Respondents No.1 to 3 have also filed cross-objections under Order 41, Rule 22 of the Code of Civil Procedure for enhancement of the compensation amount.

2. The facts of the case, in short, are that the deceased Ramswaroop, aged 25 years, resident of Ghosipura, District Shivpuri (M.P.), was going towards Pohri from Shivpuri on 5.4.1999 at about 7.00 am. Near Madav Chowk, respondent No.4, the driver of the offending bus bearing Registration No. MP08-D-1045, drove the said bus rashly and negligently and by doing so he not only dashed the vehicle upon the deceased Ramswaroop but also rushed over him causing his death. Respondents No. 1,2 and 3 being wife and children of the deceased

Ramswaroop filed an application under section 166 of the Motor Vehicles Act for getting compensation due to death of the deceased Ramswaroop. Respondent No. 5 was added as the owner of the bus for his vicarious liability towards respondent No.4. Appellant was also added as the insurer of the vehicle and a compensation of Rs. 16 lacs was demanded.

3. The respondents No.4 and 5 remained ex parte before the Tribunal.

4. The appellant insurance company, in reply, has accepted that the vehicle was insured with it but the respondent No.4 did not possess any valid driving license and, therefore, insurance company was not liable to pay any compensation being insurer.

5. The Tribunal framed four issues relating to negligence, death of Ramswaroop due to an accident, valid driving licence of respondent No.4 and computation of compensation with relief and costs. After recording the evidence of the parties, the Motor Accidents Claims Tribunal awarded a sum of Rs. 83,500/- as a compensation to the claimants/respondents No. 1,2 and 3 and set off Rs. 50,000/- which was paid by the appellant as the interim compensation under no fault liability. An interest of 9% per annum was also granted from 5.7.1999 i.e. the date of application.

6. In the present matter; only two points are to be decided. First is as to whether the insurance company is absolved from its liability and secondly whether the compensation awarded by the trial Court was inadequate and hence it can be enhanced. For the first point, the plea was taken by the appellant insurance company that at the time of incident respondent No.4 Shivkant Singh Bhadoriya did not possess any valid driving licence to drive the vehicle. In this connection, the surveyor Mr. GP. Lawaniya (NAW1), examined himself and produced the documents Ex.D-1 to D-4. The document Ex.D-1 was a receipt for deposit of the fee before the RTO to get the information. The document Ex.D-2 is the certificate issued by the RTO and Ex.P-11 was the photocopy of the driving licence to show that it was renewed up to 28-12-1996. According to Mr. Lawaniya (NAW1), the driving licence was renewed up to 28.12.1996 and since accident had taken place on 5.4.1999, therefore respondent No.4 did not have any valid driving licence. The Tribunal has relied upon the judgment passed by this Court in the case of Oriental Insurance Co. Ltd. v. Barelal and others [1997(1) Vidhi Bhasvar 204], in which it was held that if the driver was experienced to drive the truck then in the absence of any valid licence the insurance company does not absolve from its liability. However, if evidence produced by Mr. Lawaniya (NAW1) is considered then certificate Ex.D-2 indicates that the Surveyor Mr. G.P. Lawaniya (NAW1) received the information pertaining to validity of aforesaid licence up to 28.12.1996. No information of that licence after 28.12.1996 was sought by Mr. G.P. Lawaniya (NAW1). According to his report Ex.D-3, he gave an information to the insurance company. The relevant operative para of the said information is as under:

In my verification of above mentioned driving licence from L.A. Morenal and found it genuine and believable."

In the report Ex.D-3, Mr. GP. Lawaniya (NAW1) did not mention that the licence was expired and thereafter it was not renewed. Respondent No.4 remained ex parte before the Tribunal and, therefore, the photocopy of the licence was produced by the applicants as received from the police. In last page of document Ex. P-11, it is mentioned that licence was renewed from 11.1.1999 to 10.1.2002 and, therefore, when the accident had taken place on 5.4.1999 it was for the insurance company to prove that the renewal entry for the period dated 11.1.1999 to 10.1.2002 was fake and it was not done by the licensing authority, Morena, however, Mr. GP. Lawaniya (NAW 1) is silent about that entry. No certificate has been obtained from licensing authority, Morena [RTO, Morena] that such entry was fake. When licence of respondent No.4 was renewed from time to time then it shall be presumed that it was renewed for the period 11.1.1999 to 10.1.2002 and its was for the insurance company to rebut such an entry.

7. After considering the report Ex.D-3 given by Mr. GP. Lawaniya (NAW1) that he found the licence to be valid and effective and no verification was sought from the licensing authority that renewal endorsement for the period 11.1.1999 to 10.1.2002 was not done by the licensing authority Morena or such entry was fake, then in absence of any evidence adduced by the appellant such entry could not be rebutted, hence, that burden of proof was on the appellant to prove that respondent No.4 did not possess any valid driving licence at the time of accident and thus the appellant has failed to discharge its burden. According to letter Ex.D-3, it is apparent that respondent No.4 not only had driving licence but badges were issued to respondent No.4 endorsing that he was entitled to drive the service vehicle. Under these circumstances, when the appellant could not prove that at the time of accident respondent No.4 did not have any valid driving licence, it could not be absolved from its liability to pay compensation being insurer of the company.

8. Thought the Tribunal gave a different ground to reject the plea of the appellant but actually the plea of the insurance company was baseless and no basis was produced for that plea of Mr. GP. Lawaniya. When Mr. GP. Lawaniya in his own document Ex.D-3 gave an opinion that respondent No.4 had a valid driving licence along with badges and thereafter no verification was obtained for renewal of the licence for the period 11.1.1999 to 10.1.2002 then Mr. GP. Lawaniya was not expected to give contrary statement before the Tribunal on oath. The evidence of Mr. G.P. Lawaniya is not at all reliable. Now, since the appellant could not prove that respondent No.4 did not have any valid driving licence to drive the bus, plea of the appellant insurance company cannot be accepted that it is absolved from its liability to pay compensation as insurer, hence there is no substance in the appeal filed by the appellant insurance company and it is liable to be dismissed.

9. So far as the question pertaining to enhancement of compensation amount is concerned, it is argued by the learned counsel for respondents No. 1 to 3 that the Tribunal has found the income of the deceased Ramswaroop to be Rs. 500/- per month which was too low in assessment. Similarly, the tribunal did not award an appropriate compensation in various heads like loss of consortium, funeral expenses and loss of estate. In this connection, if the computation as made by the Tribunal is perused then it appears that the Tribunal has assessed the income of the deceased Ramswaroop on the basis of the order passed by this Court in the case of "Somti Bai (Smt.) and others v. Mishrilal Chow dhary and others"" [1995(2) Vidhi Bhasvar 73]. It is pertinent to note that the said matter was decided in the year 1995 and, therefore, the notional income was to be considered of that year in which the accident had taken place and therefore it was for the Tribunal to assess the national income of the deceased for the year 1999. The learned counsel for respondents No. 1 to 3 invited the attention of this Court to Schedule II of the Motor Vehicles Act that after amendment in the year 1994, the minimum income of Rs. 1,5000/-per annum is to be presumed as notional income in case where the person was non-earning whereas the Tribunal has considered the income of the deceased Ramswaroop to be less than the income prescribed in Schedule II. The submission made by the learned counsel for respondents No. 1 to 3 is acceptable and income should be re-computed before this Court.

10. The claimant Parwati Bai (AW1) has stated that the deceased Ramswaroop used to sell ice candies on his bicycle and therefore he was earning a sum of Rs. 200/- per day, however, he could perform such a job in the summer season only and in remaining days he used to perform his own cultivation and prosecute the job of labourer. In those days, he was getting a sum of Rs. 50/- per day as wages. Deepak (AW2) has stated that the deceased Ramswaroop was his brother-in-law who met with an accident when he was having a bag of ice-cream candies on the bicycle. In this connection, if Dehati Nalisi, Ex.P-3, is perused which was lodged by the deceased Ramswaroop himself then the fact was mentioned in the Dehati Nalisi that at the time of incident he was going to sell ice-candied and the bag of such ice-candies was kept on the carrier of his bicycle. Hence, it is proved by Parwati (AW1) and Deepak (AW2) that in summer season, the deceased Ramswaroop used to prosecute the job of selling ice-candies after getting the same from the manufacturer, however, the claim of the claimant Parwati Bai (AW1) is not acceptable that the deceased was earning a sum of Rs. 200/- per day by selling ice-candies. For such purpose, it was for the claimants to examine the distributor of ice-candies to show that how many ice-candies used to be given to deceased Ramswaroop everyday and what was his share and profit. Hence, actual income of the deceased Ramswaroop could be proved by selling of ice-candies. If the ice vendor prosecutes the shop in the summer season only and income is not proved then his earning be computed as if he was earning the remuneration equal to the earnings of an unskilled labourer. Similarly, the claimant Parwati Bai (AW1) could not produce the relevant documents pertaining

to land possessed by the deceased Ramswaroop so that it can be said that he used to cultivate his own land. Under these circumstances, it is apparent that when the deceased Ramswaroop was not a jobless person but he was prosecuting a job of a labourer in the year 1999 and, therefore, his notional income should have been computed on the basis of collector rate of such wages of the year 1999.

11. The claimant Parwati Bai (AW1) could not produce any evidence to show as to what was the Collector rate for payment of wages to an unskilled labourer at that time. But the claimant Parwati Bai (AW1) has accepted that except the summer season, deceased was getting Rs. 50/- per day as labourer. When in summer season he was getting a better job of selling ice-candies, it is possible that his average income was more than Rs. 50/- per day and therefore if the entire evidence is considered then the average income of the deceased Ramswaroop can be computed as Rs 60/- per day which comes to Rs. 1,800/-per month. It is not established that the deceased Ramswaroop was working six days in a week. Such kind of poor persons are required to work for all the seven days in a week, else they cannot maintain their family and, therefore, the monthly income of the deceased Ramswaroop should be computed to the tune of Rs. 1,800/-.

12. In Schedule II of the Motor Vehicles Act, 1/3rd income should be deducted while considering the dependency of the concerned claimants because it would have been spent by the deceased for his own maintenance, however, in the present case, such direction as given in Schedule II cannot be taken as it is. The deceased Ramswaroop has a wife and two children and, therefore, looking to the future of the children and therefore looking to the future of the children it cannot be said that two children may be counted as one unit. Hence, on the income of the deceased four persons were dependent including the deceased and, therefore, dependency of the claimants should be counted by deducting 25% of the entire income which could be a reasonable expenditure for the deceased Ramswaroop himself and, therefore, the dependency of the claimants falls to the tune of Rs. 1,350/- per month and thus the annual dependency comes to the tune of Rs. 16,200/-. According to the MLC Ex.P-4 age of the deceased was shown to be 25 years and, therefore, according to Schedule II of the Motor Vehicles Act, the multiplier of 18 should be given to the claimants and hence the compensation on the basis of the aforesaid computation would be Rs. 2,91,600/-.

13. The amount of loss of consortium, funeral expenses and loss of estate as mentioned in Schedule II of the Motor Vehicles Act is on the basis of price index of the year 1994 and, therefore, when accident has taken place in the year 1999 then the amount on these three heads should be increased according to the price index. Hence, it would be appropriate to grant a sum of Rs. 10,000/- to the respondent No. 1 for loss of consortiums, a sum of Rs. 10,000/- towards funeral expenses and a sum of Rs. 10,000/- due to loss of estate. Hence, the entire compensation comes to the tune of Rs. 3,21,600/-. Since the compensation is

computed on the basis of the probabilities and approximation, it would be in the round figures and, therefore, the entire compensation would be Rs. 3,22,000/-

14. On the basis of the aforesaid discussion, it would be apparent that instead of compensation of Rs. 83,500/- claimants were entitled to get a sum of Rs. 3,22,000/- in all. Out of that compensation amount, a sum of Rs. 50,000/- be adjusted which was paid by the insurance company as no fault liability compensation or interim compensation. Since respondents No.2 and 3 have become major, at present, it is not desired to keep the amount of compensation in fixed deposit. There is no any objection raised by the insurance company that respondents No.2 and 3 are not literate persons, hence, it, would be appropriate that the claimants should get the entire compensation in cash.

15. On the basis of the aforesaid discussion, the appeal filed by the appellant-insurance company is hereby dismissed with cost. The appellant-insurance company shall bear the cost of respondents No. 1,2 and 3 of this appeal. Advocates fee is quantified at Rs. 5,000/- in all for each party. On the other hand, the cross-objections of respondents No. 1 to 3 are accepted and the compensation amount awarded by the Tribunal is enhanced from Rs. 83,500/- to 3,22,000/-. Since that amount was to be paid on 5.7.1999, therefore, an interest of 8% per annum shall be paid on the enhanced amount by the appellant and respondents No.4 and 5 to the claimants from 5.7.1999. The amount deposited by the insurance company as interim award or no fault liability compensation and amount during pendency of the appeal shall be adjusted with the compensation amount and for that amount interest should be computed from 5.7.1999 to the date on which that amount was deposited. The respondents No. 1 to 3 shall also be entitled to get the cost incurred in the appeal as well as before the Claims Tribunal. The appellant and the respondents No.4 and 5 are jointly and severally liable to pay the compensation. The cross-objections filed by the respondents No. 1 to 3 are hereby disposed of with the aforesaid direction.