

(2004) 11 AP CK 0099
In the Andhra Pradesh High Court
Case No : A.A.O. No. 3491 of 2004

Nelluri Sambasiva Rao (died) per L.Rs.	APPELLANT
Vs	
Smt. B. Ramaprasadam and Another	RESPONDENT

Date of Decision : 04-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Limitation Act, 1963 — Article 137
Motor Vehicles Act, 1988 — Section 166(3)

Citation : (2005) 2 ACC 449 : (2005) 1 ALD 852 : (2005) 1 ALT 545

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : T.S. Rayalu, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Though notice served on the second respondent but there is no appearance on behalf of second respondent-United India Insurance Company Limited, Jaggaiahpet, Krishna District. Mr.T.S. Rayalu, the learned counsel appearing on behalf of appellants-claimants insisted to dispose of the appeal on merits.

2. Originally the first claimant who sustained injuries in the motor accident filed claim-petition for grant of compensation of Rs. 1,30,000-00 but restricted his claim for Rs. 1,00,000-00 owing to the injuries sustained by him in the motor accident. Subsequently, pending trial of claim-petition, the first claimant succumbed to the injuries on 01 -4-1999. The claimants 2 to 4 who are legal representatives of the deceased-claimant No. 1 were brought on record as per orders dated 21-7-2000 in I.A.No. 582 of 2000 passed by the Claims Tribunal in the main claim-petition. Now the legal representatives of the first claimant, who are claimants 2 to 4 have filed this Civil Miscellaneous Appeal against the award and decree dated 19-10-2000 in MVOP. No. 831 of 1997 on the file of the Court of Motor Accidents Claims Tribunal (Ill-Additional District Judge) .Guntur District,

holding that the respondents 1 and 2 herein who are owner and insurer of offending lorry bearing Regn. No. AP. 16-V-1127 are jointly and severally liable to pay compensation of Rs. 1,00,000-00 together with interest @ 9% p.a. thereon from the date of application till its realization as against the claim made u/s 163A of the Motor Vehicles Act (for brevity "the Act") for the injuries received by the first claimant.

3. The facts giving rise to the filing of this appeal can be summarised as follows:

4. On 18-5-1997 while the first claimant (deceased) was proceeding to Yelamaru village of Gudivada Revenue Mandal carrying samans for the marriage of his brother in a mini lorry bearing Regn. No. AP. 16V-1127 belonged to the first respondent. The first claimant and four other persons boarded the vehicle for unloading the samans. The first claimant paid the hire charges to the owner of lorry. While the said lorry was proceeding towards Yelamaru village and by the time when it reached Jayapuram, the driver of the first respondent drove it in a high speed and in a rash and negligent manner and as a result of which the lorry fell down into a canal. The claimant No. 1 sustained grievous injuries and his spinal cord was dislocated. Thereafter, he was shifted to Government Hospital, Avanigadda and later to the University General Hospital, Vijayawada. The Station House Officer, Koduru Police Station registered a case in Cr. No. 39/97 against the driver of the said mini lorry and took up investigation.

5. The first respondent remained ex parte.

6. The second respondent filed its counter denying the averments made in the claim-petition. In the counter, the second respondent submitted that at the time of accident the driver of lorry was not possessing valid driving licence and that the first respondent violated the conditions of the Insurance policy. Further the first claimant was not carrying samans as owner of the goods but he was travelling as passenger with twenty others. There is no rashness or negligence on the part of the driver of the first respondent. The petitioners are put to strict proof with regard to the manner in which the accident took place. The claim is excessive and exorbitant. Therefore, the second respondent is not liable to pay compensation.

7. On the basis of the above pleadings, the Claims Tribunal framed the following issues for trial:

(1) Whether the accident occurred due to rash and negligent driving of the driver of mini lorry bearing Regn. No. AP. 16V-1127?

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

(3) To what relief?

8. To buttress the claim, the claimants examined P.Ws. 1 to 3 and marked certified copies of Ex. A-1 FIR, Ex. A-2 wound certificate of the deceased, Ex. A-3

Motor Vehicle Inspector's Report. Ex. A-4 charge sheet in C.C. No. 68/1998 on the file of the Court of Judicial Magistrate of First Class, Avanigadda. Ex. A-5 OP chit issued by University General Hospital, Vijayawada, Ex. A-6 certificate issued by Dr. K. Rajasekher, Vellatur, Ex. A-7 case sheet. The second respondent-Insurance Company examined its Senior Assistant as R.W-1 and marked Ex. B-1 Insurance policy issued in the name of first respondent.

9. On scrutiny of oral and documentary evidence adduced on behalf of the claimants and second respondent, the Claims Tribunal held on issue No. 1 that the accident was caused due to the rash and negligent driving of the driver of mini lorry bearing Regn. No. A.P. 16V-1127.

10. While dealing issue No. 2, the Claims Tribunal has taken into consideration the oral evidence of P.W. 1, who is the wife of the first claimant-deceased stated that soon after the accident, her husband was brought to the Government Hospital, Avanigadda and from there he was brought to Government Hospital, Vijayawada and took treatment for seven days. Later he was taken to NIMS Hospital, Hyderabad and took treatment for twenty days. As she had no money, the deceased was therefore brought to the Government General Hospital, Guntur and he underwent treatment for five months and later he was taken to the village. His spinal cord was fractured. He was completely bed-ridden and she attended on him. Subsequently her husband succumbed to the injuries. She spent an amount of Rs. 50,000-00 towards medical expenses. Her husband was cooli and used to earn Rs. 75/- per day. Now there is nobody to look after herself and her children. She also filed Ex. A-2 wound certificate, Ex. A-5 OP Chit issued by the University General Hospital, Vijayawada, Ex. A-6 certificate issued by Dr. K. Rajasekhar. To support her contention, P.W.1 examined P.Ws.2 and 3. P.W.2 who is the brother of the deceased stated in his evidence with regard to the manner of accident leading to the death of the deceased and that he gave report to the police. P.W.3 Dr. S. V. Ranga Rao, Civil Surgeon and Professor of Neuro Surgery, University General Hospital, Vijayawada stated in his evidence that Mr. Nalluri Sambasivarao was admitted in University General Hospital, Vijayawada on 18-5-1997 for treatment. On admission, he found para plegias (total loss of movement of both legs). The X-ray confirmed fracture of spinal cord. The deceased was in hospital for eight days. He recommended him to take to NIMS Hyderabad, as there was total paraplegias. The injury was grievous in nature. The disability was 90% Ex. A-7 is the case sheet. He further stated that usually if a person received that type of injury, it is not possible for further improvement. According to the information furnished, the age of the injured is noted as 35 years is Ex. A-7. P.W.1 also filed Ex. A-6 wound certificate issued by Dr. K. Rajasekhar, which reveals that the deceased Nelluri Sambasiva Rao was brought to his hospital for traumatic paraplegia (bed sores). Patient's general condition was Prognosis explained and referred to higher centre. A perusal of oral evidence of R.W.1 goes to show that he is associated with second respondent as Senior Assistant. He was appointed as investigator and according to him, the first claimant and others were proceeding in the lorry to attend a marriage.

Therefore, the first respondent violated the conditions of policy and the second respondent is not liable to pay compensation. To rebut the contention of the claimants, the second respondent failed to file investigator's report before the Claims Tribunal. In the absence of Investigator's report, the Claims Tribunal held that the first respondent has not violated conditions of Ex. B-1 Insurance policy. Therefore, the claimants have proved that there is valid coverage of insurance on the offending lorry. Considering the oral evidence and documentary evidence the Claims Tribunal determined the income of the deceased at Rs. 15,000/- per annum and deducted 1/3rd towards his personal expenses and arrived at Rs. 12,000/- per annum towards contribution to his family. According to Ex. A-7 the age of the deceased was mentioned as 35 years by the date of accident, therefore, the Claims Tribunal applied the multiplicand 13 and arrived at Rs. 1,56,000-00. The Claims Tribunal further granted an amount of Rs. 10,000-00 towards loss of consortium besides Rs. 2000-00 towards funeral expenses. Thus, the total compensation awarded to the claimants 2 to 4 is Rs. 1,68,000-00 together with interest @ 12% p.a., from the date of application. The Tribunal further observed that the claim-petition was filed for Rs. 1,30,000-00 but restricted the claim to Rs. 1,00,000-00 with subsequent interest @ 12% p.a. from the date of claim-petition till the date of realization.

11. On issue No. 3 the Claims Tribunal held that the respondents 1 and 2 are jointly and severally liable to pay compensation of Rs. 1,00,000-00 with subsequent interest at 12% p.a. from the date of application till the date of deposit with costs. Out of the said compensation amount, the Claims Tribunal apportioned Rs. 70,000-00 to the second claimant and Rs. 15,000/- each for the third and fourth claimants and permitted the second claimant to withdraw a sum of Rs. 25,000-00 and directed to keep the rest of the amount of the second claimant for 36 months and also the share amount of minor claimants 3 and 4 in fixed deposit in any nationalized bank till they attain majority.

12. According to Mr. T.S. Rayalu, the learned counsel appearing for the appellants-claimants, while the claim-petition was pending trial, the first claimant succumbed to the injuries and thereafter the legal heirs of the first claimant, who are claimants 2 to 4 were brought on record. In view of the changed circumstances, the claimants 2 to 4 having not satisfied with the compensation awarded by the Claims Tribunal filed an application under Order 6 Rule 17 and Section 151 of the CPC seeking to enhance the total claim of Rs. 1,00,000-00 to Rs. 1,50,000-00 and consequently to amend the main claim-petition as follows:

(1) Enhance at SI. No. 25 (b) i.e., for medicines, extra nourishment special diet and attendant charges from Rs. 20,000-00 to Rs. 40,000-00.

(2) Add the head (e) after the head (d) in column No, 25 towards funeral expenses Rs. 5,000-00.

(3) Enhance at column No. 25 [C] from Rs. 80,000-00 to Rs. 1,05,000-00 by adding Rs. 25,000-00 towards loss of permanent dependency, love and affection,

mental shock and consortium to the second petitioner.

(4) Enhance the total compensation amount from Rs. 1,00,000-00 to Rs. 1,50,000-00 in column No. 25.

(5) Delete Rs. 1,00,000-00 and replace Rs. 1,50,000-00 in column No. 25 and column No. 28.

13. He further contended that the Claims Tribunal did not consider the above amendment and dismissed the unnumbered Interlocutory application holding that the main petition is filed claiming compensation of Rs. 1,30,000-00 but restricted the claim to Rs. 1,00,000-00. Again this petition is filed praying the Tribunal to enhance the claim from Rs. 1,00,000-00 to Rs. 1,50,000-00 in the main petition. The appellants herein who are claimants 2 to 4 have contested the claim-petition by producing abundant evidence. To rebut the contention of the claimants, the second respondent failed to file investigator's report before the Claims Tribunal. In the absence of non-filing Investigator's report, the Claims Tribunal held that the first respondent has not violated terms and conditions of Ex. B-1 Insurance policy. Therefore, the claimants have proved that there is a valid coverage of insurance on the offending lorry. The reasons assigned by the Claims Tribunal in dismissing the application filed seeking enhancement of compensation from Rs. 1,00,000-00 to Rs. 1,50,000-00 is contrary to the factual background and the misfortune spree, which was haunting the unfortunate claimants 2 to 4 of this case.

14. He further relied on a judgment in *The New India Assurance Co. Ltd. Vs. C. Padma and Another*, wherein the Supreme Court held:

[A] Motor Vehicles Act, 1988 - S. 166(3) (omitted by Act 54 of 1994 w.e.f. 14-11-1994)- Deletion of period of limitation prescribed under - object of, stated - Application of amending Act to pending claim petitions - Held, claimant entitled to the benefit of amended provision irrespective of the fact that the cause of action arose prior to the enforcement of the Amendment Act or under old Act (as in the present case) - Motor Vehicles Act, 1939, Section 110-A(3).

[B] Motor Vehicles Act, 1988 - S. 166(3) (omitted by Act 54 of 1994 w.e.f. 14-11-1994) - Pending claim petitions -General Clauses Act, 1897, S. 6-A and Limitation Act, 1963, Art. 137, held, not applicable - Beneficial legislation - Effective relief, untrammelled by the technicalities, to be the only consideration - Interpretation of Statutes - Basic rules of interpretation -Beneficent construction.

In a motor accident, which took place on 18-2-1989, the respondent filed claim-petition on 02-11-1995. The Claims Tribunal rejected the plea of limitation raised by the appellant-insurer and awarded compensation. The revision petition filed by the appellant was dismissed by the High Court and hence the present appeal.

The only issue the Supreme Court was invited to consider was whether the claim barred under the Motor Vehicles Act, 1939, could be revived because of the Motor Vehicles (Amendment) Act, 1994, by which the limitation clause in Section

166(3) was deleted. Dismissing the appeal, the Supreme Court, held:

When the claim petition was filed subsection (3) of Section 166 of the Motor Vehicles Act, 1988 had been omitted. The period of limitation having been deleted, the Tribunal was bound to entertain it without taking note of the date on which the accident took place. Faced with this situation, Mr. Kapoor submitted that *Dhannalal Vs. D.P. Vijayvargiya and Others*, case does not consider Section 6-A of the General Clauses Act and therefore, needs to be reconsidered. We are unable to accept the submission. Section 6-A of the General Clauses Act, undoubtedly, provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". In *Dhannalal* case the reason for the deletion of sub-section (3) of Section 166(3) has been set out. It is noted that Parliament realized the grave injustice and injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on the ground of limitation. Thus "the different intention" clearly appears and Section 6-A of the General Clauses Act would not apply.

15. In view of the proposition of law laid down by the Supreme Court stated supra-1, the finding of the Claims Tribunal is contrary in dismissing the un-numbered Interlocutory Application holding that it is filed at a belated stage. Considering the facts and circumstances of the case, having regard to the family of the deceased consisting of wife, two minor children, who lost their dependency consequent upon the untimely death of the deceased in a motor vehicle accident which shattered and battered the dream of the entire family into a horror of profound grief and shock and in those circumstances this court is very much concern to give succour for the future prospect reminiscently and find out solace for the welfare of the children and downtrodden families in this hour of need. The reason of death of the breadwinner in a mishap cannot be equated in terms of money. If the amount of compensation is enhanced the grief stricken family may find some solace to the mental agony and manage its affairs. A small man's problems would quite often throw greater challenges to the Judge and legal system if they were to do justice to him. Therefore, the continued development of rules and principles, innovations of precepts and concepts are both desirable and inevitable. We thought hitherto that technicality is the unfailing resource of an Indian litigant, but we also find now that the technicality has become very handy and convenient tool both for the lawyer and the judge to deny justice to crying men and women particularly those who are on the streets! If a judge tends to apply technicality at the cost of justice, termination of a legal action brought before him would be a quite easy and timesaving device; mind-boggling exercise in the decision-making can be avoided, That is the trend in dispensation of justice. Therefore, it is a time to sacrifice orthodoxy in legal reasoning to secure legal justice to an aggrieved individual. Now the challenge brought before this court in this case relates to the question of the claimant entitling to the benefit of amended provision irrespective of the fact that the cause of action arose prior to the enforcement of the Amendment Act or under the Old Act. As

the Supreme Court has very clearly laid down in the above proposition of law that Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, if otherwise the claim is found genuine. Secondly, it is a self-contained Act, which prescribes the mode of filing the application, procedure to be followed and award to be made. Parliament, in its wisdom, realized the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim-petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation, invoking of Article 137 of the Limitation Act would defeat the intendment of the Legislature.

16. The Insurance Company has appointed R.W.1 to investigate into the matter and according to R.W.1 the first claimant (deceased) and others were proceeding in the lorry to attend the marriage. Hence, the contention of the Insurance Company is that first respondent violated the conditions of policy and therefore the Insurance Company is not liable to pay any compensation. When the Insurance Company examined R.W.1, for the reasons best known it did not file the Investigator's report. Therefore, it can be inferred that the first respondent has not violated any conditions of Ex.B-1 Insurance policy. Thus, the claimants have proved that there is a valid coverage of Insurance on the offending lorry. Now taking into consideration the oral and documentary evidence marked on behalf of the claimants, I deem it appropriate to set aside the order passed by the Claims Tribunal in unnumbered Interlocutory application, dismissing the application under Order 6 Rule 17 read with Section 151 of CPC seeking to enhance the total claim of Rs. 1,00,000-00 to Rs. 1,50,000-00. On reappreciation of the oral evidence of P.Ws.1 and 3 and that apart Exs.A-2, A-5 and A-6 and in the absence of cogent evidence with regard to earnings of the first claimant-deceased, the Claims Tribunal determined his income at Rs. 15,000/- per annum and deducted 1/3rd towards his personal expenses and arrived at Rs. 12,000/- per annum towards contribution to his family. According to Ex. A-7 the age of the deceased was mentioned as 35 years by the date of accident, therefore, the Claims Tribunal applied the multiplicand 13 and arrived at Rs. 1,56,000-00. The Claims Tribunal further granted an amount of Rs. 10,000-00 towards loss of consortium besides Rs. 2000-00 towards funeral expenses. Thus, the total enhanced compensation awarded to the claimants 2 to 4 in the appeal is Rs. 1,68,000-00 together with interest @ 12% p.a., from the date of application. Accordingly, the award and decree passed by the Claims Tribunal is modified to the extent indicated above.

17. With the above modification, the Civil Miscellaneous Appeal is allowed. No costs.