
(2008) 06 AP CK 0015
In the Andhra Pradesh High Court
Case No : MA CMA No. 2089 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

B. Ayyappa and Others

RESPONDENT

Date of Decision : 20-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170

Citation : (2009) ACJ 1391 : (2008) 5 ALD 583 : (2008) 5 ALT 531

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Sriman, for the Appellant; V. Atchuta Ram, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondents 1 to 3, who are the husband and children of B. Suseela (the deceased), filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (for short - "the Act"), seeking a compensation of Rs. 3,00,000/- alleging that the deceased died in an accident that occurred on 24.2.2004 at about 11.50 p.m. due to the rash and negligent driving of the Tipper bearing No. AP-36 720 belonging to the 4th respondent and insured with the appellant. 4th respondent chose to remain ex parte before the Tribunal and this Court also. Appellant, after taking permission from the Tribunal u/s 170 of the Act, filed a counter contesting the claim of respondents 1 to 3. In support of their case, respondents 1 to 3 examined two witnesses as PWs.1 and 2 and marked Exs.A1 to A4. No oral evidence was adduced by the appellant but Ex.B.1 copy of the insurance policy was marked by consent. The Tribunal, having held that the accident occurred due to the rash and negligent driving of the Tipper belonging to the 4th respondent, awarded Rs. 2,73,500/- as compensation to respondents 1 to 3. Aggrieved thereby, the insurer of the vehicle involved in the accident preferred this appeal.

2. Inasmuch as the appellant is questioning the quantum of compensation only, the point for consideration is to what compensation are the respondents 1 to 3 entitled to?

3. The main contention of the learned Counsel for appellant is that, inasmuch as the deceased was 5 years younger to her husband i.e., the first respondent, the Tribunal was in error in taking the age of the deceased instead of taking the age of her husband into consideration for fixing the multiplier and its failure to keep in view the fact that respondents 2 and 3 are the grown up son and daughter, and hence cannot be said to be dependants on the earnings of the deceased resulted in its passing an award for higher amount than that is just and proper.

4. As rightly contended by the learned Counsel for appellant, respondents 2 and 3, who are grown up children of the deceased, cannot be said to be dependants on the deceased or her earnings. May be the deceased would become a dependant on them because old aged parents have to be looked after by the children. In normal circumstances, elder members in the family depart first, leaving behind their youngsters. So, when the claimants in the claim petition are elder to the deceased victim the age of the youngest dependent would be taken into consideration for fixing the appropriate multiplier. So, it is the age of the first respondent i.e., husband of the deceased that should be taken into consideration for fixing the appropriate multiplier in this case because respondents 2 and 3 really cannot be said to be dependent on either the services of the deceased or her earnings.

5. The contention of the learned Counsel for appellant is that inasmuch as the case of respondents 1 to 3 is that first responded is elder to his wife i.e., the deceased by five years, the Tribunal should have fixed the multiplier "8" instead of 11". I find no force in the said contention because Ex.A.2 inquest panchanama shows the age of the first respondent, who was present at the time of inquest as a blood relative of the deceased, as 52 years. Even accepting the contention of the learned Counsel for appellant that the age difference between the deceased and the first respondent is 5 years, inasmuch as the Tribunal took the age of the deceased as 50 years, the age of the first respondent would be 55 years. As per the second schedule to the Act, the multiplier for age group of 50 years to 55 years is " 11". So, the Tribunal did not commit any error in fixing the multiplier as " 11". The other amounts awarded by the Tribunal are in accordance with the second schedule and so the compensation awarded by the Tribunal to respondents 1 to 3 cannot be said to be excessive and seems to be just and reasonable. The point is answered accordingly. In view of my finding on the point for consideration, the appeal is dismissed. Parties are directed to bear their own costs in this appeal.