

(2005) 06 AP CK 0079
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2055 of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Nanepalli Swamynaidu and Others

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 455
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2005) 3 ACC 537 : (2005) 4 ALT 214

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; Jayanti S.C. Sekhar, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") aggrieved by the award of the Motor Accidents Claims Tribunal-cum-the Court of III Additional District Judge, Visakhapatnam (for short "the Tribunal below") dated 7-4-2004 passed in M.O.P. No. 1096 of 2003. The parties herein are referred to as arrayed before the Tribunal below.

2. The petitioners-claimants filed claim petition before the Tribunal below u/s 166 of the Act read with Rule 455 of A.P. Motor Vehicles Rules, 1989, claiming compensation of Rs. 1,60,000/- on account of death of Smt. Nanepalli Atchayamma in a motor vehicle accident, which took place on 13-10-2002 at Godicherla Junction, Nakkapalli Mandal of Visakhapatnam District.

3. As averred in the claim petition, it was the case of claimants that on 13-10-2002 at about 6-30 p.m. when the deceased was standing on the left side of the road at Godicherla Junction in order to board a bus, Van bearing registration No. AP 31U-1378 was driven by its driver in a rash and negligent manner and dashed to the deceased. In the said accident, the deceased

sustained grievous injuries and succumbed to the injuries while undergoing treatment in the Government Hospital, Yelamanchili. It was the case of claimants that the deceased was earning member in the family and in view of sudden death of the deceased, they lost dependency. Compensation was claimed on account of loss of dependency, loss of estate etc.

4. The first respondent in the claim petition is the owner and the second respondent is the insurer of the vehicle. The claim was resisted by both the respondents. As averred in the counter-affidavit, it was the case of the first respondent that the deceased herself suddenly crossed the road without observing traffic on the road and there was no negligence on the part of the driver of the van. The second respondent-insurer also contested the proceedings. While generally denying allegations of the claimants, it was the case of the Insurer that unless negligence is proved on the part of the driver of the van, they are not liable for payment of compensation.

5. On the basis of rival claims, the following issues were framed by the Tribunal below for trial:

(1) Whether the pleaded accident occurred resulting in the death of N. Atchayamma and if so was it due to the rash and negligent driving of the Van bearing No. AP 31U-1378?

(2) Whether the petitioners are entitled to compensation and if so what quantum and what is the liability of the respondents? and

(3) To what relief?

To prove the claim on behalf of claimants, the first claimant, husband of the deceased, was examined as P.W.1, an eye-witness to the accident was examined as P.W.2 and documentary evidence under Exs.A-1 to A-5 were marked. On behalf of respondents, no evidence was adduced, either oral or documentary.

6. The Tribunal below, having regard to the oral and documentary evidence on record, has recorded a finding that the accident occurred due to negligence on the part of the driver of the vehicle. Then, proceedings to assess compensation, though it was the case of the claimants that the deceased was earning Rs. 70/- per day by cooli work, but in the absence of clear evidence to prove the same, the Tribunal below assessed earnings of the deceased at Rs. 15,000/- per annum and assessed annual loss to the claimants at Rs. 10,000/- per annum. Further, having regard to the age of the deceased, which was at 50 years, the Tribunal below applied the multiplier of "13" and awarded compensation of Rs. 1,30,000/- i.e., Rs. 10,000/- x 13. In addition to the same, the Tribunal below awarded compensation of Rs. 20,000/- and Rs. 2,000/- on account of loss of estate and funeral expenses respectively. In total, the Tribunal below has awarded compensation of Rs. 1,52,000/-.

7. In this appeal, it is submitted by Sri Kota Subba Rao, learned Counsel appearing for the appellant-Insurance Company that the Tribunal below erred in

applying the multiplier of "13" taking into account the age of the deceased. It is submitted that the Tribunal below ought to have considered the age of the first claimant, who is the husband of the deceased, and ought to have applied only the relevant multiplier of "11" but not "13".

8. On the other hand, it is submitted by Sri Jayanthi S.C. Sekhar, learned counsel appearing for respondents, that in this case though the deceased was earning Rs. 70/-per day inspite of the same, the Tribunal below assessed his earnings at Rs. 15,000/-per annum only. In that view of the matter, the compensation awarded by the Tribunal below is just and reasonable. It is further submitted by the learned counsel that though the first claimant lost his wife in the accident, the Tribunal below has also not considered compensation on account of loss of consortium. While it is true, as much as the deceased was the wife of the first claimant, the Tribunal below ought to have considered the age of the first claimant for the purpose of applying the relevant multiplier, but, it is to be seen, if the age of the first claimant is considered, the relevant multiplier, which is to be applied is "11". But, however, in this case, it is to be noted, in view of the judgment of the Supreme Court in the case of P.C. Kakar Vs. Commandant, Military Hospital, Trimalgiri and Others, , claimants are also entitled for compensation of Rs. 15,000/- on account of loss of consortium. Such a conventional sum of compensation on account of loss of consortium was also not awarded by the Tribunal below in this case. If such a claim is considered even by applying the multiplier by taking into account the age of the first claimant also, more or less the claimants are entitled for same compensation. In that view of the matter, taking into account the over all compensation awarded by the Tribunal below, it cannot be said, the compensation awarded is excessive and exorbitant than just and reasonable. In that view of the matter, I do not find any merit in this appeal to interfere with the award of the Tribunal below.

9. The Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.