
(2014) 06 AP CK 0122

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2047 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

S. Rajya Lakshmi

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 158, 166

Citation : (2014) 5 ALT 766 : (2014) 2 AnWR 920

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : B. Devananad, Advocate for the Appellant; S. Venkatesh Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Challenging the compensation awarded in O.P. No. 2732 of 2006 by the MACT-cum-III Additional Chief Judge, City Civil Court, Hyderabad, (for short, the Tribunal), the New India Assurance Company Limited/3rd respondent preferred the instant MACMA.

2. The appellant herein is the third respondent; respondents 1 to 4 herein are the claimants; respondent No. 5 and 6 herein are respondents 1 and 2 before the Tribunal.

3. The factual matrix of the case is thus:

a. Claimants 1 to 4 are the wife, minor son, daughter and mother of the deceased Purushottam. (Pending appeal, the second and third claimants were declared as majors). They filed O.P. No. 2732 of 2006 on the pleas that on 28.09.2006 when the deceased was proceeding on his motorcycle near Sabja garden, galaxy road, Tolichowki, a truck bearing No. AP 16 TU 4005 came behind him being driven by its driver in a rash and negligent manner and dashed the motorcycle and thereby the deceased fell down and suffered grievous injuries

and died on the spot and that due to his death the claimants who are all his dependents became destitutes. On these pleas, the claimants filed the O.P. against the respondents 1 to 3 who are the driver, owner and insurer of the offending truck and claimed Rs. 12,00,000/- as compensation under different heads.

b. Respondents 1 and 2 who are the driver and owner of the vehicle remained ex parte whereas third respondent/insurance company filed counter and opposed the claim.

c. During trial, PWs. 1 to 4 were examined and exhibits A1 to A18 and Ex. X1 were marked on behalf of the claimants. No oral and documentary evidence was adduced on behalf of the third respondent.

d. A perusal of the award would show that issue no. 1 is concerned, the Tribunal having regard to the eye witness evidence of PW2 coupled with exhibits A1-FIR, A2-charge sheet, A3-scene of offence panchanama, A4-MVI report, A5-PM report and A6-Inquest report, held that the accident was occurred due to the fault of the first respondent who was the driver of the offending truck. Issue no. 2 relating to quantum of compensation is concerned, the Tribunal in all granted Rs. 8,54,000/- as compensation under different heads as follows:

Hence, the appeal by the insurance company challenging the compensation as excessive and exorbitant.

4. Heard the arguments of Sri B. Devanand, learned counsel for the appellant, Sri K. Venkatesh Gupta, learned counsel for the respondents 1 to 4/claimants. No representation for respondent No. 5, though served. Respondent No. 6 was unserved. However, since respondents 5 and 6 remained ex parte before the Tribunal and suffered award, their absence in the appeal will not have any impact in view of the decision reported in Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, .

5. Challenging the award, learned counsel for the appellant firstly argued that the Tribunal grossly erred in accepting the monthly income of the deceased as Rs. 7,500/-per month without there being any cogent evidence in this regard. The Tribunal ought to have taken his income as Rs. 15,000/- per annum following the second schedule of the Act in which case the compensation for the loss of earnings will be drastically reduced. He thus prayed to reassess the compensation by allowing the appeal.

6. Per contra, supporting the award, learned counsel for the respondents 1 to 4/claimants argued that the Tribunal in fact awarded a low compensation by committing certain errors.

Firstly, the Tribunal failed to accept the monthly income of the deceased as Rs. 15,000/- in spite of the evidence that the deceased was conducting various avocations and earning the said amount.

Secondly, he would argue, the Tribunal erred in deducting 1/3rd from his gross earning towards personal expenditure. The Tribunal ought to have followed the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and deduct 1/4th instead of 1/3rd since the number of dependents is four.

Thirdly, the Tribunal has not added the future prospects of the deceased to his income.

Fourthly, it is contended that the Tribunal without assigning any reasons failed to grant compensation for funeral expenditure, loss of estate, loss of love and care etc statutory items. He thus urged that if all the above points raised by him are taken into consideration, the compensation will be much more than what was granted by the Tribunal. He thus prayed to reassess the compensation and grant a just and reasonable compensation to the claimants by enhancing the same.

7. As already stated supra, the Tribunal granted a total compensation of Rs. 8,54,000/-with proportionate costs and simple interest at 7.5% per annum from the date of O.P. till the date of realisation. While the appellant/insurance company is challenging the quantum on the ground of its exorbitance, the respondents 1 to 4/claimants contend that the award was too low and needs enhancement.

Admittedly, the claimants have not preferred any independent appeal or cross objections seeking enhancement of compensation.

8. In the light of the above rival arguments, the points for determination in this appeal are:

1. Whether the compensation awarded by the Tribunal is excessive and needs reduction?
2. If point No. 1 is held negative, whether compensation can be enhanced in the present appeal filed by the Insurance Company?

9. POINTS 1 and 2:

In a case of this nature, the rights of the respective parties and role of the High Court (appellate Court) are delineated by Hon"ble Apex Court in a decision reported in Ranjana Prakash and Others Vs. Divisional Manager and Another, as follows:

Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by

the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

While laying down above principles, the Apex Court also happened to consider the power of the Appellate Court under Order 41 Rule 33 CPC. It observed thus:

This principle also flows from Order 41 Rule 33 of the CPC which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the Respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief.

10. The principles laid down above can be summed up thus:

(i) The High Court shall by taking facts and applying relevant principles determine just compensation.

(ii) If compensation so determined is more than the compensation awarded by the Tribunal, it shall allow the appeal if it is filed by the claimants and dismiss the appeal if it is filed by the owner/insurer.

(iii) If the compensation determined by the High Court is less than the compensation awarded by the Tribunal, it shall dismiss the appeal if filed by the claimants for enhancement and allow the appeal if filed by the owner/insurer for reduction.

(iv) The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation. (Emphasis supplied)

11. Apart from the above decision, I happened to peruse the other judgments too on this aspect.

12. In Nagappa Vs. Gurudayal Singh and Others, the Honourable Apex Court happened to discuss the powers of the tribunal/court in awarding more compensation than the one claimed by the claimants. It observed thus: For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "Just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be

contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition.

No doubt, in the above decision the Honourable Apex Court held that a tribunal/court while assessing the just compensation can award the amount exceeding the amount claimed by the claimants. However, in this case, there was no occasion for Honourable Apex Court to consider the mutual rights of the parties in an appeal filed by the opponent party. Therefore, in my humble view, the ratio in Nagappa's case (supra) can be limited to those cases where claim petitions and enhancement appeals are filed by the claimants wherein the tribunal/court upon considering just compensation principle can award more compensation than claimed.

13. Then, in the case *The APSRTC, rep. by its General Manager and Another Vs. M. Ramadevi and Others*, the facts are that on account of death of M. Nageswara Rao his LRs. filed claim petition against APSRTC and tribunal granted Rs. 2,46,000/-. Aggrieved the Corporation filed appeal before the High court and the claimants did not prefer any appeal. The High court held that the award as made was inadequate and just compensation was not awarded. Ultimately the High Court accepted the pay of the deceased as Rs. 3,536/- in stead of Rs. 2,367/- taken by the tribunal and applied the same multiplier 12 as applied by the tribunal and arrived the compensation and thus enhanced the same. Aggrieved by the judgment the Corporation preferred appeal before the Apex Court and contended that when there was no appeal by the claimants, the High court should not have enhanced the compensation in the appeal filed by the Corporation. It also contended that multiplier as adopted was high.

In the above appeal the Division Bench of the Apex Court relied upon Nagappa's case (supra) to the effect that function of the tribunal/court is to award just compensation which is reasonable on the basis of evidence produced on record. Accordingly, the Supreme Court reduced the income of the deceased from Rs. 3,536/- as adopted by the High Court to Rs. 3,500/-. It also reduced the multiplier from 12 to 10 and computed compensation which came to Rs. 2,60,000/-. In the ultimate analysis the compensation awarded by the Supreme Court was more than the one awarded by the tribunal but less than the one awarded by the High court.

It may be noted that in the above case, one crucial aspect which was discussed in *Ranjana Prakash's* case (supra) has not come up for discussion in an appeal filed by the claimant for enhancement of compensation, on applying just compensation principle, if the appellate court finds the claimants are entitled to lesser compensation than awarded by the tribunal, whether the appellate court can suitably reduce the compensation. Therefore, in my humble view, the

decision in Ramadevi's case (supra) also has not totally discussed about the rights of the parties and role of the appellate court in an appeal.

14. Then, we have another decision of Apex Court in Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service, . In this case the facts are that for the death of one Nazirbhai his L.Rs. filed claim petition against Ahmedabad Municipal Transport Service. The tribunal awarded Rs. 3,51,300/- with interest at 9% per annum. Aggrieved the said Transport Service preferred an appeal before the High Court of Gujarat. The High Court partly allowed the appeal and reduced the compensation to Rs. 2,51,800/- and ordered that the excess amount of Rs. 99,500/- shall be returned to the appellant/Transport Service with interest at 9% per annum. Aggrieved by the judgment, the L.Rs. of the deceased filed appeal before Apex Court to set aside the impugned judgment and further, award just and reasonable compensation by modifying the judgment of the tribunal.

Apex Court assessed the compensation under various heads and arrived at Rs. 16,96,000/- and awarded to the claimant. In this context, the Honourable Apex Court relied upon the ratio in Nagappa's case (supra) and held thus:

In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases.

In the above case, no doubt, compensation awarded by the Apex Court was more than awarded by the tribunal and the High Court. However, it must not be forgotten that the principle in Nagappa's case (supra) is borrowed in enhancing the compensation in the appeal preferred by the claimants and not by Ahmedabad Municipal Transport Service. Here also, there was no occasion to consider the respective rights of the parties in the appeal preferred by the opponent party. So also, there was no occasion to discuss the point as to whether the appellate court by applying just compensation principle can/cannot reduce the compensation than awarded by the tribunal in the appeal filed by the claimants. These aspects are silent in Ramadevi's case (supra) and Sanobanu Nazirbhani Mirzas case (supra).

So, on a conspectus of all the above judgments, in my considered view, Ranjana Prakash's case (supra) has comprehensively dealt with the rights of the parties in an appeal and role of the appellate court. Therefore, the ratio laid down in Ranjana Prakash's case (supra) is followed in the instant appeal.

15. The facts are concerned, the deceased Purushottam studied intermediate

(Ex. A10) and passed Typewriting English and Telugu (Lower) (Exs. A11 and A12). His age was consistently mentioned as 45 years in Ex. A5-PM Report and Ex. A6-Inquest report. Then the avocation and earning of deceased are concerned, it is the case of claimants that earlier the deceased was working as dealer of Feena LPG and managing affairs of Gupta Gas Agencies and earning good income at Achampet in Mahabubnagar district and later in the year 2001 he shifted to Hyderabad for the education of his children and started residing in Vivekananda nagar, Dilsukhnagar. At Hyderabad, he had been marketing products of several companies such as M/s. BIT and BYTE Communications, Apple Network Marketing Limited. Besides, he was also working as a real estate broker. Out of all these avocations, he was earning Rs. 15,000/- per month. In proof of the same, PWs. 1, 2 and 4 were examined and exhibits A13 to A17 and Ex. X1 were marked.

a) PW1 is the wife of the deceased who deposed in tune with her petition pleadings and stated that her husband was earning Rs. 15,000/- per month. In the cross examination she admitted that none of the documents produced by her would disclose the income of the deceased.

b) PW2 is the brother of the deceased. He also corroborated the version of PW1. In the cross examination, he admitted that he does not know whether his brother was running the agency of Feena LPG gas at Achampet or not. He denied the suggestion that the deceased was not having any avocation and income.

c) Then PW4 is concerned, he was examined to prove the real estate brokerage work of the deceased. PW4 deposed that he purchased a flat for Rs. 6,93,000/- vide Ex. X1-sale deed dated 16.03.2005 through the deceased and paid 1% of the sale amount i.e. Rs. 7,000/- as brokerage to him. He admitted in the cross examination that the fact that the deceased acted as broker and he was paid commission was not mentioned in the sale deed. This is the oral evidence regarding the avocation of the deceased. Exhibits A13 to A15 are the declarations given on behalf of M/s. BIT and BYTE Communications Private Limited to the effect that their products are being sent through the deceased. Then Ex. A17 is the Tax Invoice issued by Apple Network Marketing Limited for Rs. 1,500/- in the name of the deceased. Ex. A16 is the letter addressed by the deceased on behalf of Gupta Gas Agencies to M/s. Chinoy Electronics Pune for sending sample pouches for their machines.

16. When the above oral and documentary evidence is perused, so far as the claim of the claimants that prior to migration to Hyderabad the deceased was working as dealer of Feena LPG gas dealership, Achampet is concerned, there is no proper evidence. Ex. A16 letter would at best show that the deceased wrote a letter but it does not reveal his capacity as an employee or dealer of M/s. Feena LPG Gas. So the avocation and income of the deceased long prior to his death cannot be taken for consideration.

17. His earnings at Hyderabad are concerned, the evidence of PW4 would show

that the deceased was doing real estate brokerage work. PW4 being a stranger and nothing was brought on record to show his inclination to help the claimants, his evidence can be relied. Similarly, exhibits P13 to P15 would also show that the deceased was marketing products of technological companies. All these would show his different avocations. The income from these avocations is concerned, there is no proper evidence. Therefore the Tribunal, in my considered view, was right in fixing his income notionally as Rs. 7,500/- per month. A person attending variety of avocations would earn at least that much amount per month. It is argued by the appellant that the Tribunal ought to have taken his notional income as Rs. 15,000/- per annum basing on the second schedule of the Act. I am afraid this argument is not correct. The notional income of Rs. 15,000/- as mentioned in the second schedule will be taken in those cases where the deceased was a non-earning person. The annual income of the deceased which would serve the purpose as multiplicand comes to Rs. 90,000/- (Rs. 7,500 x 12). The dependents of the deceased are four in number. So following Sarla Verma's case (supra) 1/4th is to be reduced rather than 1/3rd as did by the Tribunal. Deducting 1/4th the balance amount comes to Rs. 67,500/-. The Tribunal following the Sarla Verma's case (supra) selected 14 as multiplier basing on the age of the deceased as 45 years. Hence, the same can be approved. By multiplying the net annual earnings of the deceased with 14, we will arrive at the loss of earnings which comes to Rs. 9,45,000/-(67,500 x 14). Thus, the claimants are in fact entitled to said amount had the Tribunal deducted 1/4th instead of 1/3rd towards personal expenditure of the deceased. To this amount, a sum of Rs. 25,000/- towards funeral expenses is to be added following the decision reported in Rajesh and Others Vs. Rajbir Singh and Others, . Another sum of Rs. 20,000/- towards loss of estate is also to be added since the Tribunal has not granted any compensation for funeral expenses and loss of estate. Thus, the total compensation comes to Rs. 10,04,000/- as follows:

18. Now, in the light of the principles laid down in Ranjana Prakash's case (supra), since the compensation assessed by this Court is higher than the compensation awarded by the Tribunal and as the appeal is filed by the insurance company and not by the claimants, the only course open for this Court is to dismiss the appeal. Points 1 and 2 are answered accordingly

19. In the result, this appeal is dismissed by confirming the award passed by the Tribunal. No costs in the appeal.

As a sequel, miscellaneous petitions if any pending, shall stand closed.