(2022) 03 TEL CK 0048

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 2719 Of 2007 , Cross Objections No. 5500 Of 2008

New India Assurance Company Limited, Secbad — APPELLANT

Vs

Usham Manemma 2 Ors — RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:
A.P.Motor Vehicles Rules, 1989 — Rule 2(g)
Code Of Civil Procedure, 1908 — Section 2(11)
Motor Vehicles Act, 1988 — Section 140, 166, 166(1)(c)
Arbitration And Conciliation Act, 1996 — Section 2(1)(g)

Citation : (2022) 03 TEL CK 0048

Hon'ble Judges : G. Sri Devi, J

Bench : Single Bench

Advocate : I Maamu Vani, Pottigari Sridhar Reddy

Final Decision : Dismissed/Partly Allowed

Judgement

Challenging the judgment and decree, dated 27.07.2007, passed in O.P.No.505 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V-Additional District Judge (FTC), Ranga Reddy District at L.B.Nagar (for short "the Tribunal"), the New India Assurance Company Limited filed the present appeal. The 2nd respondent/2nd claimant also filed Cross-Objections being aggrieved by the quantum of compensation granted by the Tribunal on the ground that it is grossly inadequate.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

The claimants, who are the wife and married daughter of one U.Bixapathi (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- for the death of deceased in a road accident that took place on 05.03.2006. It is stated that, on 05.03.2006, at about 1.30 P.M., the deceased was proceeded on his

Luna bearing No. AP 15 C 655 towards Medchal from Srirampuram Village and reached Bharat Petrol Pump at Yellampet Village on National High Way No.7 in Medchal Mandal, and after filling fuel in the Luna while the deceased was crossing Somaram Cross Roads, one Car bearing No. AP 25 F 6242, which was proceeding from Hyderabad to Nizamabad, came in a rash and negligent manner and dashed the deceased in opposite direction. As a result of which, the deceased fell down and received crush injuries to his head and died on the spot. Basing on the complaint lodged by the 1st claimant, a case in crime No.120 of 2006 has been registered against the driver of the Car. It is also stated that the deceased was earning Rs.4,500/- per month by doing mason work and due to the death of the deceased, the claimants have lost their love and affection and also earning member of the family. It is also stated that the accident occurred due to rash and negligent driving of the Car, the 1st respondent being the owner and 2nd respondent being the insurer of the said Car are jointly and severally liable to pay compensation to the claimants.

Before the Tribunal, the 1st respondent filed written statement contending that the accident occurred only due to the negligence of the deceased as he came on wrong side and hit the Car suddenly and fell down and, therefore, there is no fault on the part of the driver of the Car and prayed to dismiss the claim-petition.

The 2nd respondent-Insurance Company filed counter denying all the averments in the petition including the manner in which the accident took place, negligence on the part of the Car driver, age, avocation and income of the deceased. It is also stated that the accident was occurred only due to the rash and negligent driving of the deceased. It is further stated that the compensation claimed is excessive and prayed to dismiss the claim-petition.

Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the pleaded accident occurred resulting in the death of the deceased U.Bixapathi due to the rash and negligent driving of the vehicle Car bearing Registration No. AP 25 F 6242 by it's driver?

2. Whether the petitioners are entitled to any compensation and if so, what quantum and what is the liability of the Respondents?

3. To what relief?

During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the Insurance Company, no oral evidence was adduced, but Exs.B1 and B2 were marked.

After analyzing the evidence available on record, the Tribunal held that the accident was occurred only due to the rash and negligent driving of the Car bearing No. AP 25 F 6242 by its driver and accordingly, awarded an amount of Rs.2,83,000/-against respondents 1 and 2 jointly and severally with interest @ 7.5% per annum from the date of petition till the date of realization and directed the respondents to deposit the said amount within one month from that day.

Aggrieved by the same, the Insurance Company filed the present appeal and the 2nd respondent/2nd claimant filed the cross objections.

Heard both sides and perused the record.

Learned Standing Counsel appearing for the appellant/ Insurance Company would submit that the 1st claimant, who is the wife of the deceased died during the pendency of the claim-petition and the 2nd claimant, who is the married daughter of the deceased, was not dependent on the deceased and as such, the finding of the Tribunal that the 2nd claimant, being the sole surviving legal representative of the deceased, is entitled to the compensation is improper and that the Tribunal ought to have awarded only Rs.50,000/- under not fault liability. It is also submitted that the Tribunal erred in granting Rs.15,000/- towards consortium to the 1st claimant, who was passed away pending the claim-petition and that the Tribunal also erred in assessing the income of the deceased at Rs.3,000/- without any basis and erred in applying the multiplier '11' for the person aged about 50 years.

The learned Counsel for the Cross Objector/2nd claimant would submit that though the deceased was earning Rs.4,500/-per month, the Tribunal erred in fixing the income of the deceased at Rs.3,000/-. It is also submitted that as per the P.M.E. report-Ex.A4, the age of the deceased was 45 years, but the Tribunal erred in taking the age of the deceased at 50 years and applied the multiplier '11' instead of '13'. It is further submitted that as per the principles laid down by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others 2017 ACJ 2700, the 2nd claimant, being the sole legal representative of the deceased and the 1st claimant, who died during the pendency of the claim-petition, is also entitled to the future prospects and also Rs.33,000/- towards loss of estate and funeral expenses. Therefore, it is argued that the income of the deceased may be taken into consideration reasonably for assessing loss of estate and prayed to enhance the same.

A perusal of the impugned judgment would show that the Tribunal, after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Car bearing No. A.P.25F 6242. Further, the Insurance Company has not produced any evidence on record to show that there was contributory negligence on the part of the deceased. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Car bearing No. AP 25 F 6242.

The main contention of the learned Standing Counsel for the Insurance Company is that the wife of the deceased i.e., 1st claimant died during the pendency of the claim-petition and that the 2nd claimant, who is the married daughter of the deceased, is not entitled to any compensation as she was not dependent on the deceased.

In Manjuri Bera (Smt) v. Oriental Insurance Company Limited and another (2007) 10 SCC 643 while considering the question whether a married daughter, not dependant on the deceased, is entitled to file a claim petition for the death of her father, held as under:-

"9. In terms of clause (c) of subsection (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. …..The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a de ceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or adminis-trators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

In Dr. Gangaraju Sowmini v. Alavala Sudhakar Reddy (2016) 2 ALD 226 (FB) a Full Bench of this Court held as under:-

"16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though legal representative is not defined under the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P.Motor Vehicles Rules, 1989, it is clear that the definition of legal representative is given same meaning as defined under Section 2(11) of the Code of Civil Procedure. In view of the judgment of the Supreme Court in Manjuri Beras case (9 supra), it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Honble Supreme Court in Manjuri Beras case (9 supra), wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can lay a claim by filing application under Section 166 of the Act. It is also to be noticed that the situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in the judgment of Honble Supreme Court in Montford Brothers case (5 supra), it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very object and intentment of the Act. Any such measure would be wholly unequitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, we are of the view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act.

17. Accordingly, we answer the reference, holding that a non-dependant heir of the deceased who died in a motor accident is entitled to lay a claim for compensation under section 166 of the Motor Vehicles Act, 1988 where there is no other dependant legal heir for claiming compensation."

In the instant case also, initially the claim-petition has been filed by the wife and married daughter of the deceased claiming compensation for the death of the deceased. Admittedly, during the pendency of the claim-petition, the 1st claimant, who is the wife of the deceased, died and the 2nd claimant is only the legal representative of the deceased. Therefore, in view of the law laid down by the Apex Court in Manjuri Bera's case (2 supra), being the legal representative of the deceased, the 2nd claimant is entitled to claim compensation on account of the death of her father.

Insofar as the quantum of compensation is concerned, though the claimants claimed that the deceased was working as mason and earning Rs.4,500/- per month but no proof of income has been filed. In Latha Wadhwa vs. State of Bihar (2001) 8 SCC 197, the Apex Court held that even there is no proof of income and earnings, it can be reasonably estimated minimum at Rs.3,000/- per month for any non-earning member. Therefore, the tribunal has rightly taken the income of the deceased at Rs.3,000/- per month. As per Ex.A4-Post Mortem Examination Report, the age of the deceased was 50 years. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased would be Rs.2,000/- per month and Rs.24,000/- per annum. Applying multiplier '13' the total loss of estate would be Rs.24,000/- x 13 = Rs.3,12,000/-. The 2nd claimant is also entitled to Rs.15,000/-towards funeral expenses, as per Pranay Sethi's case (1 supra). Thus, in all, the claimant is entitled to Rs.3,27,000/-.

Accordingly, M.A.C.M.A.No.2719 of 2007 filed by the Insurance Company is dismissed and the Cross-Objections No.5500 of 2008 filed by the 2nd claimant is hereby allowed in part by enhancing the compensation amount awarded by the Tribunal from Rs.2,83,000/- to Rs.3,27,000/- payable by the owner of the crime vehicle and the appellant/Insurance Company jointly and severally. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award by the Tribunal till the date of realization. The enhanced amount shall be deposited within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the 2nd claimant is entitled to withdraw the same without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.