
(1996) 06 AP CK 0024

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1315 of 1989

New India Assurance Company Ltd. and Another	APPELLANT
Vs	
Pedada Prabhavathi and Others	RESPONDENT

Date of Decision : 19-06-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1997) 1 ACC 575 : (1996) 4 ALT 449

Hon'ble Judges : S. Parvatha Rao, J;K.B. Siddappa, J

Bench : Division Bench

Advocate : Kota Subba Rao, for the Appellant; V. Venkata Ramana, for Respondent Nos. 1 to 5 and Poturu Madhusudhan Kumar, for the Respondent

Judgement

K.B. Siddappa, J.—This Insurance Appeal is filed against the decretal order passed in O.P.No. 287 of 1987 on the file of the Motor Accidents Claims Tribunal-Cum-Additional District Judge, Vizianagaram. The brief facts of the case are as follows: Respondent No. 1 is the wife and Respondent Nos. 2 to 5 are the children of one P.V. Satyanarayana and R-l. At the time of the accident P.V. Satyanarayana was working as Assistant Director in Animal Husbandry Department at Vizianagaram. On the date of the accident i.e, on 11-5-1987, he had gone to Gantyada for inspection of the Live-stock Supervisory Unit. After the said inspection, he reached Budatha napallu Rural Live-Stock Unit and after the said visit he was coming back on his Scooter. When he reached Fly-over Bridge at Vizianagaram the lorry bearing registration No. ABV-3447 driven by respondent No. 1, in the O.P., came in the opposite direction in a rash and negligent manner and dashed against the scooter of the deceased. The deceased suffered severe head injuries and also injuries on the right leg and other parts of the body. After the accident he was shifted to Maharaja Government Hospital, Vizianagaram and from there on medical advice he was taken to King George Hospital, Visakhapatnam. On 12-5-1987 at 4-15 A.M., injured succumbed to the injuries. The death intimation was given to the Police. The petitioners in the O.P., contended that the accident occurred due to the rash and negligent driving of the

driver of the lorry.

2. The deceased, at the time of the accident, as said earlier, was working as Assistant Director. According to the respondents herein, the deceased was getting a salary of Rs. 4,128-30 ps. per month. They claimed various amounts under Clause 25 of the Claim Petition. In all, they claimed an amount of Rs. 7,15,000-00. In the lower Court the petitioners examined P.Ws. 1 and 2 and marked Exhibits A-1 to A-16. The respondents examined R.Ws.1 and 2 and marked Exhibits B-1 to B-3.

3. Considering both the oral and documentary evidence, the Tribunal below granted a sum of Rs. 4,44,430-00 with proportionate costs. It granted interest at the rate of 12% per annum, from the date of petition, till the date of realisation. It limited the liability of the 1st appellant i.e., the Insurance Company to Rs. 3,00,000.00, as per the conditions of the original of Ex.B-3(Insurance Policy). Out of the total compensation, it awarded Rs. 2,34,430-00 to Respondent No. 1 and an amount of Rs. 35,000-00 was granted to Respondent No. 2, an amount of Rs. 50,000-00 was granted to Respondent No. 3 and an amount of Rs. 75,000-00 was apportioned to the fourth respondent. An amount of Rs. 50,000-00 was given to the fifth respondent in the O.P. The amounts granted to the claimants were directed to be invested in the Bank.

4 Aggrieved by the said order, the present appeal is filed.

5. The learned Counsel appearing for the appellants submitted that the driver of the lorry is not negligent. The accident occurred only due to the rash and negligent driving of the scooterist, himself. As a matter of fact, R. W.2 who is the brother of Appellant No. 2, the owner of the lorry, was travelling on that day in the lorry along with R.W.1, who is the driver. Both R.Ws.1 and 2 categorically stated that the accident occurred due to the rash and negligent driving of the scooterist himself. In view of this, no liability can be fastened to the respondents in the O.P., for the said accident. We are unable to agree with this contention. In this case, there is direct evidence of P.W.1, who is the eye-witness. He clearly stated that while he was coming on his rickshaw at the time of the accident, he saw the scooterist going up-gradient on the Fly-over and the lorry was coming down-gradient. It is categorically asserted that the lorry came to the right side of the road and dashed against the scooterist, who was going to his left-side. He clearly stated that the accident occurred due to the rash and negligent driving of the lorry. The evidence of this witness cannot be doubted. Even according to R.Ws.1 and 2, they were down-gradient on the Fly-over. It is pertinent to note that the deceased was a responsible Government Officer of high rank and was aged 52 years at the time of the accident. We cannot expect this responsible officer driving the scooter in a rash and negligent manner and that too in up-gradient. There is yet another fact to be noted that P.W.1 figured as Panch witness at the time of inquest. He is the person who shifted the injured to K.G. Hospital. That itself shows that he was actually going on his rickshaw at the time of the accident and actually witnessed the incident. Therefore, much credence

has to be given to the evidence of P.W.I. In view of the above evidence, we are of the opinion that the accident occurred due to the rash and negligent driving of the lorry driver.

6. P.W.2 stated that her husband was working as Assistant Director in Animal Husbandry Department, Vizianagaram at the time of the accident. Ex.A-4 is the salary certificate. According to this, the deceased was getting Rs.4,128-30 per month, as on 1-2-1987. The genuineness of this document cannot be doubted. We can take this salary as correct. The deceased was working as Assistant Director and he was maintaining a Scooter. Necessarily, there will be his personal expenditure and also for the maintenance of Scooter. As per the judgment rendered in G.M., K.S.R.T. Corporation, Trivandrum v. Susamma Thomas, AIR 1994 SC1630 the Supreme Court allowed the deduction of 1/3 for personal expenditure of the deceased. We can adopt the same principle here. The one third of the salary of the deceased, i.e., Rs. 4,128-30 comes to Rs. 1,375-00 and odd. If we deduct this amount, we get the balance of Rs. 2,752/-. This amount is the monthly contribution of the deceased for the maintenance of his family. The annual contribution comes to Rs. 33,024-00. In this case, the deceased was aged 52 years at the time of his death. His age of retirement is 58 years. Therefore, he was left with actual service of six years. There is also contingency of his premature death by accident or some other contingency. As observed by the Supreme Court in Susamma's case (1 supra) a reduction in the multiplier has to be done in view of the lumpsum payment also. Considering all these aspects, we fix the multiplier at "9". If we multiply the annual contribution with (9) we get Rs. 2,97,216-00. Even if the full salary is taken as Rs. 4,128-00 per month he will get the total of Rs. 2,97,216-00 in the rest of the service period. If this amount is invested in the Bank, the family would have got the same amount granted by us by way of interest at the rate of 12% per annum. Therefore, the amount being granted by us is justified on this ground also. In Susamma's case (1 supra) the Supreme Court granted Rs. 15,000-00 towards loss of consortium and another amount of Rs. 15,000-00 towards loss to the estate. These amounts also have to be added to the compensation amount granted by us. Further there is evidence to show that the scooter is damaged severely. The lower Court granted Rs. 4,431 /- on the basis of Exs.A-5 to A-15. We confirm this amount. Therefore, the total amount comes to Rs. 3,31,647/-. The respondents herein are entitled to get this amount at the rate of 12% interest from the date of petition, till the date of realisation, as ordered by the lower tribunal.

7. The learned Counsel appearing for the Insurance Company submitted that as per the policy the liability of the Insurance Company is only upto Rs. 3.00 lakhs. In view of the condition in the policy we restrict the liability of the Insurance Company to Rs. 3.00 lakhs. The rest of the amount is to be paid jointly and severally by the 2nd appellant and the sixth respondent, in mis appeal. Further, as the owner of the lorry, the second appellant is vicariously liable for the acts of the driver. Hence, the balance of the amount is liable to be paid by him only.

8. In the apportionment of the compensation amount certain irregularities are committed by the lower Court. An amount of Rs. 2,34,430-00 was granted to the 1st respondent herein and several amounts were given to the other claimants. We are not satisfied with this distribution. In this case, Respondent No. 4 is the un-married daughter of the deceased. Therefore, we allot an amount of Rs. 75,000-00 towards her marriage expenses. In this case, the lower Court granted Rs. 35,000-00 to the married daughter of the deceased (R-2) on the ground that she is also a coparcener in the Hindu undivided family. This matter was considered by various High Courts and also by our High Court. In *APSRTC v. P. Raghavaiah* 1989 ACJ 622. Justice K. Ramaswamy, as he then was, held as follows:

"As regards the children, since they are married and living away from the mother, they are not entitled to any compensation u/s 110A".

This view was supported by a Division Bench of the Allahabad High Court in *Padma Devi v. U.P. State Road Transport Corporation* 1988 ACJ 667 wherein the Bench held:

"Section 21 of the Hindu Adoptions and Maintenance Act defines dependents. It has not included therein the married daughter. Consequently there is no liability to maintain the married daughter by the heirs of the deceased Hindu, who inherit the properties".

The same view was taken by the Division Bench of Madhya Pradesh High Court in *Nani Bai and Others Vs. Ishaque Khan and Others*, . and also by the Division Bench of Gujarat High Court in *Revaben and Others Vs. Kantibhai Narottambhai Gohil and Another*, . We agree with the above judgments in respect of the ineligibility of married daughter to partake a share in the compensation granted as dependent. Therefore, the second respondent, who is the married daughter cannot get any share in the compensation granted by us. The order of the lower Court to this extent is set aside. Out of rest of the compensation amount, Rs. 1,00,000-00 together with total interest on the date of deposit and costs is allotted to the 1st respondent who is the widow of the deceased. We have already earmarked an amount of Rs. 75,000/- for the marriage of Pedada Suneetha (Respondent No. 4). Respondent No. 5 is a minor. Therefore, he is allotted Rs. 60,000/-. Respondent Nos. 3 and 4 shall be entitled to equal share in the rest of the amount. It is made clear that respondent No. 4, Pedada Suneetha, who is the unmarried daughter is entitled to this amount in addition to the amount of Rs. 75,000/- allotted towards her marriage expenses. The amounts allotted are directed to be invested in any nationalised Bank, initially for a period of 5 years. Respondent No. 1 is entitled to withdraw interest accrued on the amount allotted to the minor Pedada Suresh Kumar at quarterly intervals during the minority of the Respondent No. 5 and maintain him. The other respondents are entitled to realise interest at quarterly intervals and maintain themselves. The amount of Rs. 75,000/- allotted to Respondent No. 4 towards her marriage expenses is also directed to be deposited in any nationalised Bank

initially for a period of 5 years, if the amount is not immediately required for marriage expenses. The accrued interest shall also be spent for the marriage expenses of Pedada Suneetha. In case of necessity any one of the respondents can apply to withdraw such amount as required by filing a petition before the lower Court after establishing such requirement to the satisfaction of the lower Court. But however, the amount allotted to respondent No. 5, who is a minor, cannot be with drawn at any cost during his minority.

9. The appeal is disposed of accordingly with proportionate costs throughout.