
(2014) 06 AP CK 0148
In the Andhra Pradesh High Court
Case No : M.A.C.M.A No. 743 of 2010

Oriental Insurance Company Limited	Vs	APPELLANT
M. Andalu		RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0148

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

Bench : Single Bench

Advocate : B. Devanand, Advocate for the Appellant; P. Ramakrishna Reddy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Challenging the award dated 14.10.2009 in O.P.No.791 of 2007 passed by the Chairman, M.A.C.T-cum-XXII Additional Chief Judge, City Criminal Court, at Hyderabad (for short the Tribunal), the appellant/Insurance Company preferred the instant appeal.

2. The factual matrix of the case is thus:

a) The first claimant is the wife, claimants 2 and 3 are children of the deceased M. Yadaiah. Their case is that on 20.02.2007 when the deceased was proceeding on his motorcycle bearing No. AP 28M 6160 from Narsapur to Shivampet and when he reached near Chinna Gottimukkala Village, Tufan Narsapur road he was hit by opposite coming D.C.M. Van bearing No. AP 29 T 1637 being driven by its driver in a rash and negligent manner. The deceased succumbed to injuries in the hospital. Hence, the claimants filed OP.No.791 of 2007 against respondents 1 and 2, who are owner and insurer of the offending DCM Van and claimed Rs.5,00,000/- as compensation under different heads mentioned in the O.P.

b) Respondent No.1 remained ex parte.

c) Respondent No.2 filed counter and opposed the material averments made in

the O.P and urged to put the claimants in strict proof of the same. R2 denied the policy and contended that the compensation claimed is highly excessive and untenable and thus prayed to dismiss the OP.

d) During trial P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex.B.1.

e) A perusal of the Award would show that Tribunal having relied upon the oral evidence of PW.2 eye witness coupled with Ex.A.1 F.I.R and Ex.A.2 charge sheet held that the accident was occurred due to the rash and negligent driving by the driver of the offending DCM Van.

f) Regarding issue No.2 which relates to quantum of compensation, the Tribunal awarded compensation of Rs.4,52,000/- with proportionate costs and interest at 7% p.a from the date of O.P till the date of realization under different heads as below:

Loss of earnings

Rs. 4,32,000/-

Loss of consortium

Rs. 15,000/-

Loss of love and affection

Rs. 5,000/-

Total

Rs. 4,52,000/-

Hence, the appeal by the Insurance Company.

3. Heard Sri B. Devanand, learned counsel for appellant/Insurance Company and Sri P. Ramakrishna Reddy, learned counsel for respondents/ claimants. Notice sent to the 4th respondent was not yet returned. Since he already suffered decree before the Tribunal, matter is heard.

4. a) Learned counsel for appellant challenged the award mainly on two grounds. Firstly, he argued that the Tribunal erred in accepting the entire pension amount of Rs.6,000/- of the deceased as loss to the family members for computation of compensation. He vehemently argued that on the death of pensioner, his wife will get 50% as family pension and so, in real terms the loss to claimants is only 50% out of Rs.6,000/- i.e. Rs.3,000/-. Therefore, the Tribunal ought to have taken Rs.3,000/- as net income and from this it ought to have deducted 1/3rd towards personal expenditure and computed the compensation.

b) Secondly, learned counsel argued that daughter was married and son became major and therefore, they do not deserve compensation.

5. a) Per contra, opposing the appeal, learned counsel for respondents/ claimants firstly argued that there is no need of deducting family pension from the actual pension amount received by the deceased to arrive at the net loss. The dependent family members would get family pension even after natural death of deceased and as the said amount was statutorily assured to them, there is no need to deduct the said amount from the actual pension amount received by the deceased for computation of loss of earnings. If it is done, the compensation will be drastically reduced and tortfeasor will be benefited. He argued that the Tribunal rightly rejected the contention of the appellant and hence there is no need to reverse the finding of the Tribunal. He relied upon the following decisions on the point that family pension need not be deducted from the earnings of the deceased.

1. Reliance General Insurance Company Ltd. vs. Smt. Safedi & others

2. Vimal Kanwar and others vs. Kishore Dan and others

b) Secondly, he argued that even though the son and daughter are majors, still they deserve compensation, as they being L.Rs. of the deceased represent his estate and they suffered loss on account of his death. On this aspect he relied upon the decision of the Madras High Court reported in Goutham Bafna and others vs. J.Pramod Kumar Bansal and another. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination in this appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable and it needs re-assessment?

7. a) POINT: The accident, involvement of motor cycle bearing No. AP 28M 6160, DCM van bearing No. AP 29T 1637 and death of the deceased are admitted facts. The Tribunal's finding fault with the van driver is not disputed in this appeal by the Insurance Company. So, the core point for discussion is regarding the adequacy of compensation amount.

b) For convenient discussion of first argument raised by the appellant, the deceased can be classified into two categories:

1. Employees died in harness and

2. Retired persons.

In assessing compensation for the death of an employee, the question that may arise is, whether the pension amount received by his family members needs to be deducted from his salary so as to arrive at the net loss of earnings of the deceased. In a catena of decisions, the Apex Court and various High Courts relying upon the earlier decision of Supreme Court in *Helen C. Rebello vs. Maharashtra State Road Transport Corporation* have held that P.F., pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are

all a pecuniary advantage receivable by the heirs on account of ones death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death and such an amount will not come within the periphery of the Motor Vehicles Act to be termed as a pecuniary advantage liable for deduction.

c) Precisely, regarding family pension it was held that the heirs will receive family pension even otherwise than the accidental death and there will be no correlation between the two. So, ultimately relying upon *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, , it was held in subsequent judgments that family pension need not be deducted from the salary amount of the deceased, since the family pension is not a pecuniary advantage that accrued to the family members of the deceased on account of motor vehicle accident.

d) Now, coming to the second category i.e. death of pensioner, again the question is whether the family pension receivable by his dependents is liable to be deducted from the pension which he used to receive so as to arrive at the net loss of earnings of the deceased. This issue is no more *res integra*. A Division Bench of Allahabad High Court in *Reliance General Insurance Company Ltd. Vs. Smt. Safedi and Others*, held as follows:

Learned counsel for the appellant has tried to distinguish these cases on the premises that in those cases the deceased were in service and had not retired. We are afraid how this contention is sustainable? It is wholly immaterial whether the Government servant concerned was in service or has attained the age of superannuation at the time of his death in motor accident and was getting pension. Family pension is earned by employee for the benefit of family in the form of his contribution, which is payable to his heirs after his death. Even if, a Government servant may be retired, dies natural death or on account of some ailment his widow is liable to receive family pension. Why this benefit should be given to a tortfeasor i.e. the driver of offending vehicle, or vehicle owner or insurer who has taken the life of the deceased in a motor accident. Thus, sole contention raised on behalf of the appellant for challenge in this award has no force.

e) So, in case of death of pensioner also, the family pension receivable by his family members need not be deducted to give advantage to the tortfeasor was the dictum laid down by the Honourable Allahabad High Court. I endorse the same view since the family pension cannot be termed as a pecuniary advantage that accrued to the family members of the deceased on account of motor vehicle accident. So, in the light of above law, the first contention of the appellant is rejected.

8. So far as the second contention is concerned, as rightly submitted by the learned counsel for respondents, though the claimants 2 and 3 are majors still they being the son and daughter of the deceased are his L.Rs and deserve

compensation.

9. In the result, this MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.791 of 2007. No costs in the appeal.

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