

(2004) 01 AP CK 0049
In the Andhra Pradesh High Court
Case No : CMA No. 1794 of 2002

P. Yeshodamma and Others	Vs	APPELLANT
T. Buchi Reddy and Another		RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2004) 2 ACC 299 : (2006) ACJ 414 : (2004) 2 ALD 894

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : P. Ramakrishna Reddy, for the Appellant; M.V.K. Viswanadham, SC for United India Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The United India Insurance Company Limited preferred this appeal against the order dated 19-4-2001 in OP No. 1611 of 1997 on the file of Motor Accidents Claims Tribunal, Hyderabad, granting compensation of Rs. 2,50,000/-on account of the death of P. Narayana Reddy.

2. The brief facts of the case are that on 27-8-1977 P. Narayana Reddy was going on foot to the house of one P. Venkat Reddy and when he reached Dindi Cross Roads near Check post, one Scooter bearing No. A.P.24C-9625 was driven in a rash and negligent manner resulting in the accident. The deceased having sustained fracture on the head in the said accident, was admitted in the Government Hospital, Devarkonda, and he died later. The wife and children of the deceased filed the above OP claiming compensation of Rs. 3,00,000/- from the owners and insurer of the scooter involved in the accident.

3. The first respondent-owner has not filed counter, but the second respondent filed counter denying the accident, relationship, income and age of the deceased. Further, the scooterist was not having valid driving licence.

4. The Tribunal framed issues as to whether P. Narayana Reddy died in the

accident due to rash and negligent driving of the scooter bearing No. AP 24C-9625; whether the scooter was insured with the appellant - insurer and whether the claimants are entitled to any compensation.

5. On behalf of claimants, PWs.1 and 2 were examined and Exs.A1 to A7 were marked while none was examined for the respondents but Ex.B1 copy of the insurance policy was marked. The Tribunal after considering the evidence on record held that the accident occurred due to rash and negligent driving of the scooter.

6. Learned Counsel for the appellants claimants submits that the Tribunal ought to have applied the appropriate multiplier 18 in the facts and circumstances of the case and drawn my attention to the judgment of the Apex Court in Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, wherein it was held as follows:

"While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the Second Schedule u/s 163-A of the Act which gives the amount of compensation to be determined for the purpose of claim under the Section can be taken as a guideline, while determining the compensation u/s 166 of the Act. In that view of the matter, there is no reason why multiplier of 17 should not be taken as the appropriate multiplier in this case."

7. Learned Standing Counsel for the respondent insurance company submits that the Tribunal ought to have taken the wages under the Minimum Wages Act and granted the compensation and further, the quantum of compensation is on the higher side.

8. It is seen from the evidence on record that PW-1 is the wife of the deceased and PW2 is an eye-witness to the accident. PW-2 deposed that he was standing near Dindi cross-road and witnessed the occurrence of the accident and when the deceased and his son were proceeding towards Kalvakurthy on the left side of the road, the scooterist came with high speed and dashed against the deceased due to which he sustained fracture on the head and he was taken to the Government Hospital and later, he died in the hospital. Further, the scooterist was not examined and hence, the evidence of PW2 remained unchallenged. Relying upon the evidence of PW2 coupled with the evidence of Exs.A-1 to A7, the Tribunal held that the accident occurred due to rash and negligent riding of the scooterist. In view of the evidence of PW2 coupled with the evidence of Exs.A-1 to A7, the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the scooterist. The evidence of record clearly points to the conclusion that the scooter was driven in a rash and negligent manner.

9. As regards determination of just compensation, it is seen from the impugned order that the Tribunal had taken the earnings of the deceased at Rs. 100/- per day and thus, his income was estimated at Rs. 3,000/- per month out of which one-third was deducted towards personal living expenses. Thus, the Tribunal

arrived at the annual loss of dependency at Rs. 24,000/- and applied multiplier "10" taking into account 45 years age of the deceased.

10. Admittedly, the deceased is aged 45 years at the time of accident. As per Second Schedule u/s 163-A of the Motor Vehicles Act, the victim who is aged 45 years but not exceeding 50 years, the multiplier to be applied is "13". The deceased was a labourer and the Tribunal has fixed the actual loss of dependency at Rs. 2,000/- per month. In the circumstances, I am not inclined to differ from the monthly loss of dependency at Rs. 2,000/-. Thus, the annual loss of dependency works out to Rs. 24,000/-. As per the Second Schedule, the multiplier appropriate to 45 years age of the deceased is "13". Therefore, the total loss of dependency comes to Rs. 3,12,000/-(Rs.24,000 x 13). The claimants are wife and children of the deceased and as such, I am inclined to grant the conventional sum of Rs. 15,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate. The claimants had to take the dead body of the deceased from the hospital to his house to perform the last rites. Therefore, I am inclined to grant a sum of Rs. 5,000/- towards transportation and funeral expenses. Thus, the claimants are entitled to the total compensation of Rs. 3,47,000/-. Though the claimants sought compensation of Rs. 3,00,000/-, there is no fetters on this Court to determine the just compensation beyond the claim in view of the judgment of the Supreme Court in Nagappa v. Gurdudayal Singh, 2002 (8) Supreme 497.

11. In the result, the appeal is allowed granting compensation of Rs. 3,47,000/- with interest at 9% per annum from the date of petition till the date of realization. No costs.