

(2023) 02 TEL CK 0025

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 2895 Of 2014

Pebbeti Krishnamma And Others

APPELLANT

Vs

Managing Director, APSRTC

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173
Indian Penal Code, 1860 — Section 304A

Citation : (2023) 02 TEL CK 0025

Hon'ble Judges : Namavarapu Rajeshwar Rao, J

Bench : Single Bench

Advocate : C. Mohan Prakash, Thoom Srinivas

Final Decision : Allowed

Judgement

1. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988. The appellants are aggrieved by the judgment and decree dt.15.03.2013 in M.V.O.P No. 2886 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Courts, Hyderabad. This is a case of death.

2. The brief facts of the case are as follows:

On 21.08.2011, the deceased Pebbeti Srinu while going to Hyderabad was proceeding on foot to Divis Laboratories, which is located on the southern side of National Highway No.9 and abutting to it, there was Ankireddyugem Bus Stop of Choutuppal Mandal. On either side of the road, there were bushes and trees. Further, the road was being widened on both sides and the same was not observed by the driver of the RTC bus bearing No.AP39Z662 and the said bus driver dashed the deceased from the rear side and as such he fell down and the said bus was coming from Visakhapatnam and being driven by a single driver. He drove the bus for about 1000kms from Visakhapatnam and was dousing hence, the driver could not see the deceased. As a result, the deceased sustained injuries to the head, hands and leg and succumbed to the same. On a report, the

Station House Officer, PS Choutuppal registered a case in Cr.No.189 of 2011 under Section 304-A of IPC against the driver of the bus as the accident occurred only due to the rash and negligent driving of the said APSRTC bus. The deceased P. Srinu was aged 35 years and he used to work as a labourer and earned Rs.7,000/- p.m. He was contributing his income for the maintenance of the family. The claimants filed MVOP before the Tribunal claiming compensation of Rs.7,00,000/-.

3. After hearing both sides and basing on the available evidence on record, the Tribunal awarded Rs.6,65,000/- as compensation under several heads. Against the above award, the present appeal is filed and also enhancement petition is filed by the appellants vide IA No. 2 of 2014 seeking enhancement of compensation amount from Rs.7,00,000/- to Rs.10,00,000/-.

4. Heard both sides. Perused the record.

5. Learned counsel for the appellants contended that the awarded amount was meagre and the Tribunal ought to have awarded more amount as claimed based on evidence of PW-1 and PW-2 and also Exhibits marked Ex.A1 to Ex.A5 and as per the Hon'ble Apex Court's judgment in Nagappa case reported in 2003 (2) SCC 2734 and Rajesh case reported in 2013 ACJ 1403 SC, subject to payment of court fee on the additional amount. He further contended that the Court below erred in accepting the income of the deceased at Rs.4,500/- instead of Rs.7,000/- p.m despite the appellants got examined PW-2 who is the employer contractor. Hence, prayed to allow the appeal.

6. Per contra, learned counsel appearing for the respondents argued that there is no proof of income of the deceased and as per the decision of the Hon'ble Supreme Court in Ramchandrappa (2011) 13 SCC 236, the Court below rightly fixed the salary of the deceased at Rs.4,500/-p.m. Accordingly, prayed to dismiss the appeal.

7. It is observed from the evidence of PW-2 who is the eye-witness-cum-Labour Contractor, that he categorically deposed that the deceased used to work under him as a labourer in Divis Laboratories Limited and that he was being paid an amount of Rs.7,000/- p.m. The cross-examination of PW-2 did not disprove his evidence. The Court below fixed the salary of the deceased at Rs.5,000/- p.m but has not considered adding future prospects. As such the loss of dependency was fixed to Rs.6,40,000/-; transport expenses Rs.5,000/-; loss of estate Rs.5,000/-; loss of consortium Rs.10,000/-; funeral expenses Rs.5,000/-, in all, Rs. 6,65,000/- was awarded as compensation.

8. Given the evidence on record, circumstances and the lapse in time, this Court is inclined to modify the salary of the deceased from Rs.5,000/- to Rs.6,500/-. Addition of future prospects of 40% as is apt as the deceased was aged 45 years. $\text{Rs.6,500/-} + \text{Rs.2,600/- i.e } 40\% = \text{Rs.9,100/- p.m}$ and the same annually would come to $\text{Rs.9,100/-} \times 12 = \text{Rs. 1,09,200}$. The one-third amount is to be deducted towards contribution and the apt multiplier is 16. Hence, $\text{Rs.1,09,200} \times \frac{2}{3} \times 16$

= 11,64,800/- is the loss of dependency, which the appellants are entitled to. Further, the compensation awarded for loss of estate Rs.5,000/-; loss of consortium Rs.10,000/-and funeral expenses Rs.5,000/- are enhanced to Rs.15,000/-; Rs.40,000/- and Rs.15,000/- respectively along with an addition of 10% as per Pranay Sethi 2017 (16) SCC 680. In all, Rs.40,000/-+ Rs.15000/- + Rs.15000/- + 10% = Rs.77,000/-. The amount of Rs.5,000/- towards transport expenses is justified.

9. As such, the appellants are entitled to compensation as under:

Head

Amount

Loss of dependency

Rs. 11,64,800/-

Loss of Spousal Consortium

Rs.44,000/-(Rs.40,000/- + 10%)

Loss of Estate

Rs.16,500 (Rs.15,000/- + 10%)

Funeral expenses

Rs.16,500 (Rs.15,000/- + 10%)

Travel expenses

Rs.5,000/-

Rs. 12,46,800/-

10. The appellants, with regard to the aspect of granting excess compensation than that of claimed, relied upon the decision of the Hon'ble Supreme Court in Rajesh vs. Rajbir Singh MANU/SC/0480/2013 wherein it was held as follows:

13. Whether the Tribunal is competent to award compensation in excess of what is claimed in the Application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At Paragraph 10 of Nagappa's case (supra), it was held as follows:

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.

14. The principle was followed in the later decisions in Oriental Insurance Co. Limited v. Mohd. Nasir and Anr. MANU/SC/0899/2009 : AIR 2009 SC 1219 and in

Ningamma and Anr. v. United Indian Insurance Co. Limited MANU/SC/0802/2009 : (2009) 13 SCC 710.

15. Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim. Therefore, there is no irregularity in awarding the enhanced compensation amount as against the claimed amount. However, the appellants are bound to deposit the deficit court fee upon the enhanced amount.

11. In the result, the appeal is allowed by enhancing the compensation amount from Rs.6,65,000/- to Rs.12,46,800/-(Rupees Lakh Forty-Six Thousand Eight Hundred Only). The difference of the enhanced compensation amount shall carry interest at the rate of 7.5%. The manner in which the awarded amount shall be dealt with by the appellants is as the same as directed by the Court below. The appellants are directed to deposit the deficit court fee on the enhanced amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.