
(2005) 06 AP CK 0078
In the Andhra Pradesh High Court
Case No : C.M.A. No. 4367 of 2004

P.V. Subba Rao and Another	Vs	APPELLANT
Sunkari Varahamma and Another		RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2005) 5 ALD 175 : (2005) 4 ALT 142

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : Jayanti S.C. Sekhar, for the Appellant; N. (P) Anjana Devi, for the Respondent

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal, u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act"), is filed by the Appellants, aggrieved by the award of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam, passed in M.O.P. No. 679 of 2001, dated 29-7-2004.

2. The said claim petition was filed by the claimants u/s 166 of the Act claiming compensation of Rs. 2,00,000/- on account of death of the deceased, who was their son and who died in a motor accident, which took place on 1-6-2000. As averred in the claim petition, it was their case that the deceased was a diploma holder in electrical and he was working as a Supervisor with the 1st appellant herein. It is stated that on the date of the accident the deceased was travelling as a pillion rider on scooter, which was driven by the 2nd appellant herein. When they were proceeding near Ramabadrapuram, the Scooter met with an accident, the deceased fell down from the Scooter and received serious injuries. Immediately the deceased was admitted to a private hospital by name Seven Hills Hospital at Visakahapatnam, and subsequently the deceased succumbed to injuries while undergoing treatment in the hospital. The claim was made on the ground that due to untimely and sudden demise of the deceased, the parents lost dependency.

3. The appellants herein resisted the claim before the Tribunal below and while denying the allegations of the claimants, it was the case of the appellants herein that the deceased himself drove the vehicle on the date of the accident and on his own negligence the Scooter met with an accident and he suffered severe injuries. Precisely it was the case of the appellants that as the accident was occurred due to negligence on the part of the deceased, they are not liable to pay compensation.

4. With reference to the above pleadings, the Tribunal below framed the following issues for trial:

(1) Whether the accident occurred due to rash and negligent driving of the vehicle bearing No. AP 31 M 5606 (Scooter) by its driver?

(2) Whether the claimants are entitled for compensation, if so, to what amount and from whom?

(3) To what relief?

5. To prove the claim, on behalf of claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-7 were marked. On behalf of the respondents, R.W.1 was examined, and Exs.B-1 to B-9 were marked.

6. The Tribunal below, while appreciating the oral and documentary evidence on record, has recorded a finding that the accident was occurred due to negligence on the part of the 2nd appellant herein. Though it was the case of the claimants that the deceased was earning Rs. 2,500/- per month and was contributing his substantial earning to the claimants, the Tribunal below assessed the earnings at Rs. 1,500/- per month, and after deducting one-third of the same towards personal expenses, has taken the contribution of Rs. 1,000/- per month for the purpose of assessing the compensation. But however the Tribunal below has taken into account the age of the deceased which was 23 years and applied the multiplier as 17 and awarded compensation of Rs. 2,04,000/-.

7. In this appeal it is submitted by Sri Jayanti S.C. Sekhar, learned counsel appearing for the appellants that the Tribunal below ought not to have applied the multiplier 17 for the purpose of awarding compensation. It is also submitted that the compensation awarded by the Tribunal below is excessive and exorbitant. It is also their case that inasmuch as the deceased was the son of the claimants, the Tribunal below ought to have considered the age of the mother for the purpose of applying the relevant multiplier. It is further submitted that the respondents/ claimants are entitled for compensation only by applying the multiplier as per the table notified by this Court in Bhagwandas Vs. Mohd. Arif, .

8. On the other hand, Smt. Anjana Devi, learned counsel appearing for the respondents/claimants submitted that the Tribunal below itself assessed the earnings of the deceased at Rs. 1,500/- though he was earning Rs. 2,500/- per month. In that view of the matter, the compensation awarded by the Tribunal below cannot be said to be excessive and exorbitant.

9. In this case it has to be seen that inasmuch as the deceased was the son of the claimants, the age of the claimants is the relevant aspect to be taken into consideration for applying appropriate multiplier. Where the deceased is the son of the claimants, it is fairly well settled, particularly the mother's age is to be taken into consideration. In this regard, the Tribunal below has clearly erred in applying the multiplier 17 having regard to the age of the deceased. The 2nd respondent herein who was the second claimant in the Tribunal below is aged about 47 years at the time of the accident. As per the Schedule-II, multiplier, which is notified for the claims u/s 163-A of the Act for the age group of 45 and 50 years, the appropriate multiplier notified, is 13.

10. The learned counsel for the appellants has relied upon a judgment of this Court in Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, in support of his arguments that the multiplier, which is indicated by this Court in Bhagavan Das v. Mohd. Arif (1 supra), is to be applied. But however, the Supreme Court in United India Insurance Company Limited, Tirupati Branch, Tirupati Vs. Mekkala Chandramma and Others, has clearly held that the multiplier notified in the Schedule u/s 163-A of the Act also can be taken as guide line under the claims u/s 166 of the Act. In that view of the matter, for the purpose of applying the multiplier, the Schedule, which is inserted to Section 163-A of the Act, can be taken as guide line for the purpose of awarding compensation.

11. In the circumstances, if the age of the mother of the deceased is to be taken into consideration, inasmuch as dependency is arrived at Rs. 12,000/- per annum, the claimants are entitled for compensation of Rs. 12,000/- x 13- Rs. 1,56,000/- with interest at 9% per annum thereon from the date of the claim petition till realization.

12. For the foregoing reasons, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No order as to costs.