

(2013) 07 AP CK 0085
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1148 of 2004

R. Lakshmi Devi

APPELLANT

Vs

Andhra Pradesh State Road Transport Corporation

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2014) 1 AnWR 857

Final Decision : Allowed

Judgement

P. Naveen Rao, J.—Tab petitions are the appellants challenges the Award dated 30.11.1999, passed in O.P. No. 240 of 1995 by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalli, Chittoor District. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the Claims Tribunal.

2. The facts giving rise to this appeal are as under: On 17.05.1995 at about 01.30 p.m. while the deceased was boarding the A.P.S.R.T.S. bus bearing registration No. AEZ 1283, on Kadiri - Madanapallie road near Neerugattuvaripalle, fell down while getting into the us and rear wheel of the bus ran over his legs; he succumbed to injuries. Claiming compensation of Rs. 5,00,000/- under the Motor Vehicles Act, 1988 dependents of the deceased namely, wife three minor children and mother instituted O.P. No 240 of 1995. The dependents claimed that the deceased was working as Conductor in the respondent's corporation; was aged 38 years and was drawing a monthly salary of Rs. 3,315/- it was contended that the accident occurred due to the rash and negligent driving of the driver of the bus. Therefore, the A.P.S.R.T.S. should grant all the compensation.

3. Learned Tribunal framed the following five issues for consideration:

1. Whether the petitioners are the legal representatives of the deceased?
2. Whether the deceased died due to the fault of the driver?

3. What is the compensation, the petitioners are entitled?
4. For what share the petitioners are entitled for compensation inter se?
5. To what result?

4. In issue No. 2, learned Tribunal recorded the finding that the accident could have not have occurred unless deceased was attempting to board the running bus; hence, held that there was contributory negligence on the part of the deceased, To arrive at the appropriate compensation payable, learned Tribunal considered the take home salary of deceased at Rs. 2,145/-p.m., deducted 1/3rd (Rs. 715/-) as his personal expenses, and by applying "10.45" as appropriate multiplier (His age was treated as 45 years by referring to his inquest report), the Tribunal has arrived at a compensation of Rs. 1,79,322/-, On account of the contributory negligence of the deceased, 1/4th of the amount was deducted from out of the compensation awarded and thus compensation for loss of earnings was determined as Rs. 1,34,492/-; in addition Rs. 15,000/- was awarded towards loss of estate, Rs. 15,000/- towards consortium and Rs. 3,000/- towards funeral expenses. Thus, the total compensation comes to Rs. 1,67,492/-and the said amount carries interest at the rate of 12% p.a.payable from 25.09.1995. The amount of compensation so awarded is directed to be distributed equally among all the petitioners.

5. Learned counsel for the appellants confined his argument on the issue of application of proper parameters for determination of quantum of compensation. Learned counsel further contends that age of the deceased was 38 years. He contends that in support of the age of the deceased, certificate issued by the; Department of Employment and Training, Government of Andhra Pradesh, dated 05.08.1975 was produced before the Tribunal, which was marked as Ex.A-7. No reasons are assigned by the Tribunal for not treating the claim of deceased's age as 38 years. On the, contrary, the Tribunal relied on the inquest report marked as Ex. A-3, to determine his age as 45 years. The Tribunal erred in not considering Ex.A-7, provisional certificate, which is an authenticated document and the validity of the said document is not disputed by the employer/respondent corporation. Entry in inquest report is tentative based on the rational assessment by the concerned Medical Officer looking at the dead body.

6. Hon"ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, laid down the principles for determination of quantum of compensation. In paragraph No. 14 of the said judgment, the Hon"ble Supreme Court laid down the principles to determine the personal living expenses of the deceased. Hon"ble Supreme Court held that if the dependents of the deceased are more than 3 members, 1/4th of the monthly expenses should be deducted as his personal expenses. In the instant case, the dependants of the deceased were 5 and therefore only 1/4th of the monthly income should be deducted towards his personal expenses. Furthermore, the Hon"ble Supreme Court in the said judgment has also directed to determine the future appreciation

in the income of a person as 50% of the last salary paid for the purpose of determining the future loss of contribution to the family. Learned Tribunal also erred in not considering the gross salary, the deductions made are personal savings, except Rs. 20/- towards statutory deduction. Thus, gross salary i.e. Rs. 3,315/- - Rs. 20/- = Rs. 3,295 ought to have been considered for the purpose of computation of his annual income. Therefore, I am of the opinion that the learned Tribunal erred in not applying correct parameters in determining the quantum of compensation.

7. By taking the gross salary as Rs. 3,295/- 1/4th i.e. Rs. 824/- is deducted towards his personal expenses and his monthly contribution is determined as Rs. 2,471/- By adding 50% of it i.e. Rs. 1,236 towards future prospects, the monthly loss of earnings determined is Rs. 3,707/- and annual loss of contribution as Rs. 44,484/- x 16 comes to Rs. 7,11,744/- as the total compensation payable to the dependents. The learned counsel for the appellants could not dislodge the finding of the claims tribunal as with reference to contributory negligence. The evidence on record clearly establishes that the deceased was also responsible for causing of accident. Thus 1/4th of the above amount i.e. Rs. 1,77,936/- should be deducted towards contributory negligence. On such deduction amount of compensation of compensation to which appellants are entitled to is Rs. 5,33,808/- (Rs. 7,11,744 - Rs. 1,77,936/-) Thus the amount of compensation payable to the petitioners/appellants is Rs. 5,33,808/-.

8. At the time of death of the deceased, he was blessed with three children all of them are minor, eldest of them was aged 13 years, second child was aged 09 years and third child was aged 07 years, At the crucial time of their life they lost their father. This loss cannot be compensated in monetary terms. The loss of love and affection cannot be measured. However, at least to compensate in monetary terms, intend to award an amount of Rs. 25,000/- to each of the children towards loss of love and affection. Amount of Rs. 25,000/- to each of the children towards loss of love and affection. Amount of consortium awarded to wife is also insufficient. It is to be seen that the wife lost her husband at the crucial stage 4 of her family life. Three young children were left at the mercy of others who would have been taken care of by deceased husband. In the facts and circumstances of the case, intend to enhance the consortium amount from Rs. 15,000/- to Rs. 25,000/- in addition, the petitioners/appellants are entitled to Rs. 15,000/- towards loss of estate and Rs. 3,000/- towards funeral expenses as granted by the learned Tribunal. Thus, in all the petitioners/appellants are entitled to a compensation of Rs. 6,36,808/-

9. The further question that arises is, can this Court grant higher compensation than what is claimed?

10. In Nagappa Vs. Gurudayal Singh and Others, Hon"ble Supreme Court has held as under:

"7. Firstly, under the provisions of the Motor vehicles Act, 1988, (hereinafter

referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act.

Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is subsection (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act. "Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

11. In *K. Suresh Vs. New India Assurance Company Ltd. and Another*, the Hon'ble Supreme Court held as under:

"2. Despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any role. It has been stated in *Davies v. Powell Duffryn Associated Collieries Ltd.* (No. 2) I that it is a matter of pounds, shillings and pence. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentially lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act 1988 (for brevity "the Act") stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance.

3. In *Jai Bhagwan Vs. Laxman Singh and Others*, a three-Judge Bench of this Court, while considering the assessment of damages in personal injury actions, reproduced the following passage from the decision by the H. ER All v. West Ltd. AC and 2 : p. D-G) 631 case, (*Shephard* (HL) 625 (1963, 1359, WLR (1963) 326, 1964 *Shephard*, Son>.

My Lords, the damages which are to be awarded for a tort are those which "so far as money can compensate, will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act" (Admiralty Commissioners v. *Susquehanna* (Owners), *The Susquehanna* 1926 AC 6755 : 1926 All.E.R. 124 (HL)). The word "so far as money can compensate" point to the impossibility of equating money with human suffering or personal deprivations. A money award can be calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature which has destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that Judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional." (*Jai Bhagwan* case (cited supra))

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8. The conception of "just compensation" is fundamentally concretized on certain well-established principles and accepted legal parameters as well as principles of equity and good conscience...

12. In *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, . This court has expressed thus:

2..... the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

.....

10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inherited.

13. In *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another*, . The Hon"ble Supreme Court held as under:

9. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of

assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

14. In *Ibrahim Vs. Raju and Others*, , the Hon''ble Supreme Court held as under:

We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs. 3 lakhs only with interest and costs. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty-bound to award just compensation, we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lakhs.

15. In *Catena of judgments*, Hon''ble Supreme Court laid down principles for determination of compensation. Such principles include age of the deceased, his marital status, number of dependants, his earnings as on the date of death, possible future earnings, personal expense, loss of love and affection, companionship etc. Thus, while determining appropriate (just) compensation, these parameters have to be kept in mind. By applying various principles for determination of compensation, a sum is arrived. This would be the just compensation to which claimants are entitled. Once, such amount is determined it should be granted, even if the same is higher than the claim made.

16. In the instant case, some of the principles laid down by Hon''ble Supreme Court to determine just compensation were not applied by the claims Tribunal and by applying the said principles, the amount determined is higher than what is claimed.

17. Thus, in terms of the principles of law laid down by the Hon''ble Supreme Court, petitioners are entitled to an amount of Rs. 6,36,808/- as compensation payable to them, whereas the Tribunal granted only Rs. 1,67,492/-. Though petitioners claimed Rs. 5,00,000/- before the Claims Tribunal and this Court, the compensation principles laid down by the Hon''ble Supreme Court would enable them to earn more compensation which according to Section 168 of the Motor Vehicles Act, 1988 is just compensation. In the result, the appeal is allowed enhancing the compensation from Rs. 1,67,492/- to Rs. 6,36,808/-. The petitioners/appellants are entitled to interest at the rate of 7.5% p.a. on the difference of amount between claim made (Rs. 5,00,000) and claim granted by Claims Tribunal (Rs. 1,67,492), i.e. Rs. 3,32,508/- from the date of filing of claim petition, till the date of realisation. Thus, petitioners are not entitled to interest on Rs. 1,36,808/- (i.e., Rs. 6,36,808 - Rs. 5,00,000) which is the higher compensation determined and granted more than the claim made by applying the principles laid down by Hon''ble Supreme Court. The petitioners are entitled to the equal share as held by the learned Tribunal.

Miscellaneous Petitions, if any, pending in this Appeal shall stand closed. No order as to costs.