

(2014) 04 AP CK 0061

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2614 of 2007

Rayudu Sesharatnam

APPELLANT

Vs

P.S. Ramaraju

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 10 Rule 2, 2, 9
Evidence Act, 1872 — Section 107, 108
Hindu Succession Act, 1956 — Section 8
Motor Vehicles Act, 1988 — Section 166
Specific Relief Act, 1963 — Section 34

Citation : (2015) 1 AnWR 92

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : T.N.M. Ranga Rao, Advocate for the Appellant; A. Jayanthi, Advocate for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.—The claimants 5 in number claiming as father's second wife, sisters and brothers (all majors) of deceased Nagarjunarao shown aged about 25 years even as per the Ex. A. 2 P.M. report and as per the P.W. 1 evidence, preferred the claim against the driver, owner and insurer of the lorry bearing No. AP9 T 2500 under Section 166 of the M.V. Act, claiming Rs. 2,74,000/- in O.P. No. 475 of 2006 on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-III Additional Judge, Kakinada (for short, "Tribunal") and the tribunal by award dated 30.07.2007 awarded compensation of Rs. 75,000/- with interest at 7.5% with observation that all the claimants shown as coolies as earnings members not dependants on the deceased and even remote heirs and the father of the deceased no other than the so called husband of the 1st claimant through second marriage shown as alive not impleading thereby awarding of Rs. 75,000/- is just. It is impugning the same they preferred the appeal even without impleading father of the deceased as co-respondent at least to the appeal, with contentions in the grounds of appeal that the award of the tribunal is contrary to law, that the tribunal should have seen

that the 1st claimant is second wife of father (Pothuraju) of deceased (Nagarjunarao), that the tribunal should have considered the earnings of the deceased as driver of proclainer at Rs. 4,500/-, thereby sought for allowing the appeal as claimed before the tribunal by enhancing the compensation. The learned counsel for the appellants reiterated the same during the course of hearing.

2. It is important to note that in the course of hearing of the appeal earlier in part this Court within power under Order X Rule 2, Order I Rule 10(2) CPC impleaded the father of the deceased as he is the class-II legal heir of the deceased and dependant on the deceased for the claimants are not therefrom as 4th respondent to the appeal and even notice served by the insurer at the direction of the Court, the notice is unclaimed by him and did not choose to appear that also indicates that he is alive. It is not even the case of the 1st claimant-so called wife of the said Pothuraju (father of the deceased) that the whereabouts of the Pothuraju are not known or not residing with her so also of the other claimants the major brothers and sisters of the deceased.

3. From the above, it is the contention of the learned counsel for the insurer (for the owner and driver of the vehicle did not choose to appear in the appeal but taken as heard to decide on merits) that Pothuraju-father of the deceased as dependant is entitled to compensation and the tribunal rightly awarded the quantum of Rs. 75,000/-. Hence, to dismiss the appeal.

4. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

5. Now the points that arise for consideration in the appeal are:

1. Whether the appeal as filed is maintainable, the quantum awarded by the tribunal is unjust and who is entitled to the compensation awarded claimants or father of the deceased by name Pothuraju and with what quantum and with what observations?

2. To what result?

Point No. 1:

6. The fact that the claimants relationship with the deceased as step-mother and sisters and brothers all majors and having their own earnings and no way dependants on the deceased but for the claim as legal heirs within the meaning of Section 2 sub section 11 of C.P.C. read with Section 166 of the M.V. Act and the A.P.M.V. Rules 1989 not in dispute. It is also not in dispute of the fact that the father of the deceased Nagarjunarao by name Pothuraju is alive and available as stated supra of the notice even suo-motu impleaded by the Court sent through the insurer by Registered Post returned as alive and not as died or not known. Even the P.W. 1 in her evidence deposed about her husband so called Pothuraju, is alive and available. Having regard to the above and from perusal of schedule II read with section 8 of the Hindu Succession Act being the parties

Hindus covered by the Act, for property rights father is the nearest class-II heir when compared to the brothers and sisters who are majors not dependents leave about step-mother not even remote heir much less to precede over the others. Thus, none of the claimants are entitled to maintain the claim when the father of the deceased is admittedly alive. No doubt, the law clearly speaks when the claim is filed by some without impleaded of others otherwise also entitled, the tribunal shall award compensation to all rather than dismissing. Here, when the father who is the dependant on the deceased is alive and when the claim is filed by several legal representatives which include dependants and non-dependants and non-dependants are not entitled but for the dependants even therefrom even the claimants 2 to 4 major brothers and sisters of the deceased not entitled much less the 1st claimant so called step-mother but for the father of the deceased by name Pothuraju-the 4th respondent to the appeal itself, thereby 4th respondent of the appeal alone is entitled to the claim and not by the appellants against the respondents 1 to 3 of the claim petition.

7. Now coming to the quantum of compensation, there is no dispute that the accident was the result of the rash and negligent driving of the 1st respondent-driver of the crime lorry of the 2nd respondent insured with the 3rd respondent. The age of the deceased even as per the P.W. 1 evidence 26 years, for the claim under Section 166 of the M.V. Act for a person aged between the 26 to 30 multiplier applicable is 17. His father is also not total dependant on the deceased but for as person suffering earnings of the deceased to be taken into consideration. There is no evidence regarding earnings of the deceased or of his father. The accident was dated 08.06.2006 and even as per the expression of Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, that even there is no proof of income and earnings, it can be reasonably estimated a minimum at Rs. 3,00/- p.m. for any non-earning member and the same is to be taken and the accident taken place 5 years after the said expression and taking into consideration of the increase in the cost of living index as on the date of accident if taken Rs. 3,400/- p.m. the earnings of the deceased as well as his father. The contribution from the deceased to the father even taken after deduction of personal expenses half of it (Rs. 1700/-), it is Rs. 850/-. Then it comes to Rs. 850/- x 12 x 17 = Rs. 1,73,400/- (rounded to Rs. 1,73,500/-) and loss of estate a minimum of Rs. 5,000/-, for funeral expenses of Rs. 25,000/- all comes to Rs. 2,03,500/- that is entitled by the 4th respondent alone. Accordingly, point No. 1 is answered.

8. In the result, the appeal is partly allowed in stead of awarding any compensation to the claimants by modifying the same from the award of the tribunal by awarding entire compensation arrived of Rs. 2,03,500/- with interest at 7.5% p.a. only in favour of the 4th respondent to the appeal-Pothuraju i.e. father of the deceased Nagarjuna Rao with joint liability against the respondents and as tribunal also awarded Rs. 75,000/- and if at all anything out of it deposited by the insurer and withdrawn by the claimants they need not reimburse but for not entitled to withdraw further out of any amount to deposit

and out of the amount awarded supra but for by said Pothuraju-4th respondent to the appeal. There is no order as to costs. The respondent shall deposit the balance amount within one month from the date of receipt of the order failing which the Pothuraju can execute and recover. Needless to say, if Pothuraju's whereabouts really not known, the remedy of the claimants as his legal representatives is to obtain relief of declaration with reference to Sec. 9 of CPC and Sec. 34 of the Specific Relief Act read with Section 107 and 108 of Indian Evidence Act or a petition before the Tribunal to that effect to decide for their entitlement from deemed death on lapse of such period.

9. Consequently, miscellaneous petitions if any, pending in this appeal, shall stand closed.