

(2007) 12 AP CK 0034

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 4382 and 4684 of 2003

Repaka Rajya Laxmi and Others

APPELLANT

Vs

Poldasari Komuraiah and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 140, 166, 166(1), 167, 168
Penal Code, 1860 (IPC) — Section 304A

Citation : (2009) ACJ 138 : (2008) 3 ALD 80 : (2008) 2 ALT 124

Hon'ble Judges : Ghulam Mohammed, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : A. Rajasekhar Reddy, for the Appellant; G.S. Prakash Rao, for the Respondent

Judgement

B. Seshasayana Reddy, J.—These two civil miscellaneous appeals are directed against the judgment dated 25.07.2003 passed in O.P. No. 549 of 2001 on the file of III Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, whereby and whereunder the learned Tribunal partly allowed the petition filed by the claimants u/s 166(1)(c) of the Motor Vehicles Act, 1988 (for short, "the Act") and awarded compensation of Rs. 10,83,000/- with interest @ 9% per annum from the date of the petition till the date of realisation.

2. Background facts in a nutshell leading to filing of these two civil miscellaneous appeals are: Repaka Prasad Rao was an Assistant Engineer in A.P.TRANSCO drawing a salary of Rs. 17,106/- per month. On 04.11.1999 at about 8.00 p.m. he was riding a scooter from Pothkapalli to Peddapalli. Poldasari Komuraiah parked tractor/trailor bearing Nos. AP 15 T 8392/8393 in the outskirts of Rangampalli on the middle of the road without any indications such as putting on parking lights. The Scooterist-Repaka Prasad Rao could not notice the stationed tractor/trailor and thereby dashed the trailor from behind and fell down and sustained injuries all over his body. The driver of the tractor/trailor Poldasari

Komuraiah shifted the Scooterist to Government Hospital, Peddapalli and from there to Karimnagar hospital. As the condition of the Scooterist found to be serious, he was taken to Medwin Hospitals, Hyderabad. While undergoing treatment, the Scooterist (hereinafter referred to as "the deceased")-succumbed to his injuries on 09.11.1999. A report came to be presented before the Peddapalli Police Station regarding the accident. Based on the report, a case in Crime No. 164 of 1999 for the offence u/s 304A IPC against driver of the tractor/trailor came to be registered. After due investigation, the Station House Officer, Peddapalli P.S. presented a charge-sheet before the concerned Court. Repaka Rajya Laxmi, Repaka Pavan Kumar and Repaka Madhukar, who are wife and children of the deceased, presented a claim petition before the Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar claiming compensation of Rs. 14,00,000/-. According to them, the deceased was aged 52 years and was earning Rs. 17,106/- per month as on the date of accident and he was the only earning member in the family. The claim petition was filed against the driver-Poldasari Komuraiah, the owner-Md.Ahmed Ali and the insurer-The United India Insurance Company Limited.

3. Pending the claim petition, the owner-Md.Ahmed Ali died and his legal representatives viz., Md. Kaleem Ahmed, Md. Saleem Ahmed, Md. Zaheer Ahmed and Mujeebunnisa Begum came on record as respondents 4 to 7 in the claim petition. The driver and the legal representatives of the owner filed a common counter and whereas the insurer filed a separate counter. The driver took the plea that he parked the tractor/trailor on the road side and that the deceased drove the scooter in a rash and negligent manner and dashed the trailor and thereby sustained injuries for which he succumbed while undergoing treatment in the hospital.

4. The insurer pleaded that the accident took place due to the negligence of the deceased himself and that the claimants are not the dependants of the deceased. The insurer denied the age, occupation and income of the deceased, and the vehicle being insured with it. The claimants filed O.P. No. 396 of 2000 u/s 140 of the Act under no fault liability and the same came to be allowed. The further plea of the insurer is that the compensation claimed by the claimants is excessive and exorbitant.

5.The Tribunal framed the following issues for trial:

(1) Whether the accident took place due to rash and negligent driving of the tractor-trailor bearing No. AP 15 T 8392/8393 by its driver?

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

(3) To what relief?

6. The claimants examined three witnesses and proved 8 documents on their behalf and whereas the respondents adduced neither ocular nor documentary

evidence on their behalf.

7. The learned Tribunal, on considering the material brought on record and on hearing the learned Counsel for the parties, held that the accident occurred due to negligence of the driver of tractor/trailor--1st respondent and that the claimants are entitled to compensation of Rs. 10,83,000/- with interest at 9% per annum from the date of the petition till the date of realisation. The learned Tribunal further held that 1st respondent being the driver, 3rd respondent being the insurer and respondents 4 to 7 being the owners of the tractor/trailor are liable to pay the compensation jointly and severally.

8. Dis-satisfied with the quantum of compensation, the claimants filed C.M.A. No. 4382 of 2003 and whereas the insurer filed C.M.A. No. 4684 of 2003 assailing the very grant of compensation to the claimants.

9. Since these two appeals arose out of the judgment dated 25.07.2003 passed in O.P. No. 549 of 2001 on the file of III Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar, they were heard together and are being disposed of by this common judgment. The parties hereinafter referred to as they are arrayed in O.P. No. 549 of 2001.

10. Heard learned Counsel appearing for the claimants and learned Counsel appearing for the insurer.

Sri A. Rajasekhara Reddy, learned Counsel appearing for the claimants submits that the Tribunal is not justified in allowing the application partly instead of awarding compensation as claimed by them. He would submit that promotional aspects of the deceased were not taken into consideration and therefore, compensation awarded by the Tribunal is required to be enhanced. In support of his submissions, reliance has been placed on the following decisions:

- (1) V.S. Gowdar v. Oriental Insurance Co. Ltd. 2003 (3) T.A.C. 343 (Karnataka).
- (2) K.N. Sridevi v. Oriental Fire and General Insurance Co. Ltd. (2002) ACC 453 (DB).
- (3) Patricia Jean Mahajan and Others Vs. United India Insurance Co. Ltd. and Others,
- (4) H.S. Ahammed Hussain and Another Vs. Irfan Ahammed and Another, .
- (5) Vishav Bandhu Vs. Rajian and Others, .
- (6) Shahazadi Bee and Others Vs. The Managing Director, APSRTC and Another, .
- (7) A.P.S.R.T.C. Vs. Smt. T. Yasodha and Others, .
- (8) The National Insurance Co. Ltd. v. Errolla Chinnubai and Ors. 2002 A.I.H.C. 1969.
- (9) Amarjit Kaur and Others Vs. State of Punjab and Others, .

11. Sri G.S. Prakash Rao, learned Counsel appearing for the insurer submits that the Tribunal committed error in placing reliance on the evidence of P.W. 2 whose name does not figure as eyewitness in the charge-sheet and once the evidence of P.W.2 is discarded, there is no other evidence to speak of the negligence of the driver of tractor/trailor. He would also submit that the multiplier applied by the Tribunal is on high side and therefore, compensation is to be reduced accordingly. He would further submit that the evidence brought on record is insufficient to speculate future promotions of the deceased with certainty in which case the award amount granted by the Tribunal is required to be reduced considerably. In nutshell his submission is that the claimants have been overcompensated and therefore, the award amount is required to be reduced. In support of his submissions, reliance has been placed on the decision of our High Court in National Insurance Co. Ltd. v. D. Sivasankar 2006 (4) ALT 526

12. In response, learned Counsel appearing for the claimants submits that the driver of the tractor/trailor who has been arrayed as first respondent in the O.P. does not choose to enter into the box to contradict the evidence of P.W.2 and therefore, the Tribunal is justified in placing reliance on the evidence of P.W.2 to record a finding with regard to the negligence of the driver of tractor/trailor.

13. The issues that arise for consideration in these appeals are:

(1) Whether the accident occurred due to the negligence of the driver of tractor/trailor?

(2) Whether the compensation granted by the Tribunal is just and proper? If not, as to what amount?

14. Issue No. 1: P.W.2 has been examined by the claimants as an eyewitness. He categorically stated that he saw the tractor/ trailer being parked on the middle of the road without any indications. He further testified that the deceased dashed the trailer from behind and thereby received serious injuries. Much argument has been advanced by the learned Counsel appearing for the insurer that the name of P.W.2 does not figure in the charge-sheet and therefore, no reliance can be placed on his testimony. It is a matter of record that the driver of the tractor/trailor who has been arrayed as first respondent in the O.P. has been challenged before the concerned Court for his negligence punishable u/s 304A IPC. In spite of the driver being impleaded as first respondent in the O.P., he did not choose to enter into the box to contradict the evidence of P.W.2. Therefore, in the given facts and circumstances, mere non-mentioning of the name of P.W.2 in the charge-sheet as an eyewitness cannot be a ground to reject his testimony. The driver of tractor/trailor who has been impleaded as first respondent in the O.P. is the best person to speak of the circumstances under which the accident occurred. But, he did not choose to examine himself as a witness or adduce any evidence to contradict the testimony of P.W.2. Therefore, the Tribunal is justified in placing reliance on the evidence of P.W.2 to record a finding that the accident occurred due to the negligence of the driver of the tractor/trailor. We do not see

any valid ground to interfere with the finding recorded by the learned Tribunal on this aspect. Accordingly, this issue is answered in favour of the claimants and against the respondents.

15. Issue No. 2: Broadly speaking, in the case of death, basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.

16. The purpose of compensation to dependents of the victims is that they may not be suddenly deprived of the sources of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation, but in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. The intention is not to over compensate.

17. In fixing the compensation, the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to them by reason of death. It is also to be borne in mind that the courts should not allow misfortune to be turned into windfall. In *State of Haryana and Another Vs. Jasbir Kaur and Others*, the Supreme Court considered the words just and reasonable occurring in Sections 168 and 167 of M.V. Act, 1988 in determination of compensation and held that just and reasonable compensation does not mean a bonanza or a source of profit to the victim of the accident. It is useful to refer para 7 of the cited judgment and it is thus:

(7). It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weight the various factors and quantify the amount of compensation which should be just. What would be "just" compensation is a vexed question. There can be no golden

rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just compensation, which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

18. It is no more in dispute that the deceased was an Assistant Engineer in A.P.TRANSCO. He was aged 52 years 7 months; his date of birth being 15.04.1947 and the date of accident being 04.11.1999. Ex.A-6 is the salary certificate. Ex.A-8 is the Last Pay Certificate of the deceased Ex.A-7 is the attested copy of the first page of the Service Register of the deceased. As per Exs.A-6 and A-8 certificates, he was drawing gross salary of Rs. 17,106/- and net salary of Rs. 10,449.30ps. Indisputably, his salary exceeds the taxable limit. Even during his lifetime, he must not be taking home entire gross salary. Income Tax incidence and statutory deductions are required to be deducted from the gross salary to arrive at take home salary. The statutory deductions and the income tax incidence are taken into consideration, his carry home salary would be at Rs.12,000/-.

19. An argument has been advanced by the learned Counsel appearing for the claimants that had the deceased alive, he would have got future promotions and in which case there would be a hike in his pay. We have gone through the evidence of P.Ws. 1 and 3. P.W. 1 is the first claimant, and she is no other than the wife of the deceased and P.W.3 is the person to speak of the earnings of the deceased. Neither P.W.1 nor P.W.3 stated about the future prospects of the deceased. Therefore, we do not see any merit in the contention of the claimants.

20. The law requires deduction of 1/3rd of the earnings towards personal expenses. If 1/3rd of it deducted towards personal expenses, his contribution to the family comes to Rs. 8000/- p.m. The Tribunal erred in taking the gross salary of Rs. 17,106/- as contribution to the family with out taking into account the statutory deductions and the income tax incidence.

21. The next question is what is the multiplier to be applied to arrive at the total loss of dependency. The trial court has taken 7.68 multiplier. Apparently as per multiplier table given in Bhagwandas Vs. Mohd. Arif, , the Tribunal had chosen the multiplier 7.68 assuming the age of the deceased as 50 years as on the date of the accident. Indisputably the deceased was aged about 52 years 7 months as on the date of the accident and he had left over service of only 5 years and 5 months.

22. Learned Counsel appearing for the claimants submits that the multiplier as per the structured formula in the second Schedule appended to the Act to the victims aged between 50 and 55 years is 11 and therefore, the multiplier adopted by the trial Court is proper and the same is not required to be disturbed.

23. In *Jyoti Kaul and Others Vs. State of M.P. and Another*, the Supreme Court referring to the decision of the case in *P.C. Kakar Vs. Commandant, Military Hospital, Trimalgiri and Others*, reiterated that the multiplier system should be applied for the purpose of calculation of amount of compensation. It has also been observed that the question as to what multiplier should be applied would depend upon the various facts and circumstances of the case, hence the multiplier may change to some degree.

24. The second schedule while prescribing the multiplier, had maximum income of Rs. 40,000/- per annum in mind, but in cases where the gap in income is so wide as in the present case, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible.

25. In *Nirmala Narasava v. Vilas Ramachandra Shangda* 1989 ACJ 715 (A.P.) (D.B.), a Division Bench of our High Court held that choosing the multiplier on the basis of age of the deceased at the time of his death from the annuity tables referred to in *Bhagwandas Vs. Mohd. Arif*, with necessary adjustment is preferable.

26. It is contended by learned Counsel for the appellants/claimants that the annuity table referred to in *Bhagwandas Vs. Mohd. Arif*, has become out-dated by long lapse of time and therefore the multiplier given in the structured formulae in second schedule appended to the Act should alone be considered in choosing the appropriate multiplier. We have indicated in the above paras of the judgment that the structured formulae in the second schedule had the maximum income of Rs. 40,000/- per annum in mind and in case of higher income, the multiplier given in column No. 2 of the structured formulae can only be a guidance.

27. Indeed this question came up for consideration before the Division Bench of our High Court in *Oriental Insurance Co. Limited Vs. G. Seshamma and Others*, wherein it is held as follows:

4. The learned Counsel for the respondents further submitted at the Bar that the deduction of 1/3rd income towards personal expenses of the deceased is always not advisable. It can be even less than 1/3rd. We are not in agreement with the submission made by the learned Counsel for the respondents. It has been the practice in all the reported cases that 1/3rd income is to be deducted for the expenses of the deceased while computing the compensation payable to the legal representatives of the deceased. The learned Counsel for the respondents further submitted that the multiplier used by the Tribunal is correct. In order to substantiate his contention, he relied upon a ruling reported in *APSRTC, Mushirabad, Hyd. Vs. Patan Shamshad Begum and others*, in which the Division Bench of this Court was pleased to hold that the Claims Tribunal has power to

apply the reasonable and relevant multiplier in determining compensation under the head "loss of dependency" unlike in mathematical calculations depending upon the facts of each case. We agree with the principle laid down by the Division Bench of this Court. But the learned Standing Counsel appearing for the appellant could not place any material on record, which would weigh in our minds to apply the higher multiplier than the table of multiplier given in *Bhagwandas Vs. Mohd. Arif*, . The learned Counsel further relied upon a ruling reported in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, in which their Lordships held that Second Schedule suffers from several defects, courts and tribunals cannot go by the ready reckoner. It can only be used as a guide. Therefore, the learned Counsel submitted that the Second Schedule can be used in finding the appropriate multiplier.

5. The learned Counsel further relied upon a ruling reported in *APSRTC Vs. Salvaraj Vijaya and others*, and submitted at the Bar that in fact the claimants are entitled for more compensation even without filing the cross-objections. The learned Counsel further submitted at the Bar that this Court while exercising the jurisdiction under Order 41, Rule 33 CPC can enhance the compensation. We are not in agreement with the view expressed by the learned Single Judge in the above ruling. As a matter of fact, though the Court has all powers to pass any decree or to make any order which ought to have been passed and made by the original court but this can only be done if the claimants filed cross-objections and not otherwise.

6. Now we proceeded to scrutinize as to whether the submission made by the learned Standing Counsel for the appellant has any legal force?

7. We rely upon a ruling reported in *Bhagawan Das v. Mohd. Arif*. The deceased was aged between 45 to 50 and the multiplier given for 45 years -10.45 and for 5 years - 7.68. In the said ruling His Lordship further held that in computing the multiplier for persons, who like professionals, can earn for all their lives and there is no retirement, the multiplier from the table can be increased approximated by 1 or 2 points. Therefore, we choose appropriate multiplier in this case as 12 instead of 13 as used by the Tribunal. Therefore, we hold that the deceased was earning Rs. 17,165/- p.m. deducting 1/3rd towards the personal expenses of the deceased, Rs. 11,443/- will be dependency per month and Rs. 1,37,316/- p.a. and the multiplier which we have chosen is 12. If the aforesaid figure is multiplier with 12, then the loss of dependency comes to Rs. 16,47,792/-. In addition to the above amount, the claimants are entitled to Rs. 12,000/- towards loss of consortium, Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate, making a total of Rs. 16,47,792/- plus interest at the rate of 9% p.a. from the date of petition till the date of realization.

28. A Division Bench of our High Court in *United India Insurance Company Limited, Tirupati Branch, Tirupati Vs. Mekkala Chandramma and Others*, . also considered the annuity tables referred to in *Bhagwandas Vs. Mohd. Arif*, and agreed with the proposition of law made therein. It is useful to refer para 13 of

the judgment and it is thus:

13. The learned Counsel Mr. K.L.N. Rao appeared on behalf of the appellant herein submitted that the Bar that if the petition is filed u/s 166 of the Motor Vehicles Act, then the Schedule given in Bhagwan Das v. Mohd. Arif's case has to be applied. We agree with the proposition made by the learned Counsel for the appellant herein. By reading the entire ruling, it is seen that the Hon''ble Sri Justice M. Jagannadha Rao (as he then was) considered all the aspects in the matter and gave the Schedule in the judgment, which is more on scientific basis. Therefore, we have no hesitation in holding that Bhagwan's case is applicable to the present set of facts. If once this principle is accepted, then the correct multiplier to be applied is six. Thus, in the present case, the dependency can be worked out to Rs. 9,50,400/- as against a sum of Rs. 16,51,400/- awarded. In addition to this amount, the claimants are entitled to Rs. 15,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate. Thus, the claimants-respondents herein are entitled to Rs. 9,50,400 + 30,000/- = Rs.9,80,400/-plus interest at the rate of 9% p.a. from the date of the petition till realization of the entire amount. The apportionment and the withdrawal of the amounts have to be worked out as given by the Tribunal.

29. The deceased was aged 52 years 7 months as on the date of the accident. He had left over service of 5 years and 5 months. Keeping this aspect of left over service in view, the proper multiplier can be taken at 6. Thus, the total loss of dependency can be estimated at Rs. 8,000/- x 12 x 6 = Rs. 5,76,000/-. The Tribunal granted Rs. 15,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate and Rs. 2,000/- towards funeral expenses. We are not inclined to disturb the amounts awarded under the above heads. In all the claimants are entitled to Rs. 5,76,000/- + Rs. 32,000/- =Rs.6,08,000/-. The claimants had already received Rs. 50,000/- under no fault liability in pursuance of the orders passed in O.P. No. 396 of 2000. Therefore, the said amount is required to be deducted. Thus, in all the claimants are entitled to Rs. 5,58,000/- with interest at 9% p.a. from the date of petition to the date of payment. The compensation shall be apportioned among the claimants as follows:

(1) Claimant No. 1-wife of the deceased is entitled to Rs. 2,58,000/- with interest accrued thereon.

(2) Claimant Nos. 2 and 3-children of the deceased are entitled to Rs. 1,50,000/- each with interest accrued thereon.

The claimants are permitted to withdraw Rs. 50,000/- each. The balance amount shall be invested in any nationalized bank for a period of three years.

30. Accordingly, C.M.A. No. 4684 of 2003 filed by the Insurance Company is partly allowed reducing the quantum of compensation from Rs. 10,83,000/- to Rs. 5,58,000/- and whereas C.M.A. No. 4382 of 2003 filed by the claimants is dismissed.