
(2014) 07 AP CK 0077
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 930 of 2006

S. Thenmai and Others

APPELLANT

Vs

APSRTC

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Citation : (2015) 3 ALT 653

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : T.C. Krishnan, Advocate for the Appellant; K.V. Subba Reddy, Advocate for the Respondent;

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.

1. This appeal by the claimants challenging the award dated 02.12.2005 passed in M.V.O.P. No. 465 of 1999 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittoor (for short "the Tribunal"). The parties hereinafter referred to as arrayed before the Tribunal for the sake of convenience.

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

The claimants' specific case is that the deceased was aged about 32 years, doing business met with an accident on 16.06.1999 at about 04.30 p.m. while proceeding on his motorcycle bearing No. TN-03-W-8109 from Vaniambadi to Ramakuppam along with two others. It is alleged that when they were proceeding near Naniyala Village on Ramakuppam-Vaniambadi Road, the offending bus bearing No. AEZ-3406 being driven by its driver in rash and negligent manner at high speed came on wrong side and dashed against the motor cycle. In this accident, the motorcycle was dragged to a distance of 50 feet. The deceased and two others who were traveling on the motorcycle sustained multiple injuries and died. The claimants herein are the wife, minor children and parents of the deceased. They claimed a total compensation of `

5,00,000/- contending that the deceased was earning ` 50,000/- per annum from his timber business. It is also their case that the deceased was earning ` 20,000/- per annum from agriculture.

3. The APSRTC filed counter and denied the material averments made by the claimants.

4. It has to be seen that the death of the deceased is not disputed. Only the age, occupation and income of the deceased have been disputed. Of course, it is also the case of the respondent that the accident occurred due to rash and negligent driving of the motorcyclist i.e., deceased himself.

5. The Tribunal framed the following issues:

(1) Whether the petitioners are the only L.Rs. of the deceased Mr. D. Sampath?

(2) Whether the accident was caused due to the composite negligence of the deceased-D. Sampath while driving the motorcycle bearing No. TN-03-W-8109 and the driver of the bus bearing No. AEZ-3406 or anyone of them?

(3) Whether the petition is bad for non-joinder of necessary parties?

(4) Whether the petitioners are entitled for any compensation? If so, to what quantum and from whom?

6. On behalf of the claimants, the wife of the deceased was examined as P.W. 1 and P.Ws. 2 and 3 were examined and Exs. A1 to A9 were marked. On behalf of the respondent, driver of the bus was examined as R.W. 1 and no documents were marked.

7. On issue No. 1, the Tribunal came to the conclusion that the claimants are the legal heirs of the deceased. On issue No. 2, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the bus. There is no cross appeal; Issue of negligence became final. On issue No. 3, the Tribunal answered in favour of the claimants. However, on issue No. 4, the Tribunal concluded that since the claimants have not filed Inquest report and PM report and they have not assigned any reasons for not filing those documents and age of the deceased could not be ascertained with authentic proof. Therefore, the claimants have failed to prove their claim.

8. The learned counsel for the claimants submits that as far as the age of the deceased is concerned, there is evidence of P.W. 1 and the Tribunal ought to have considered the age of the wife and age of the children and other documentary evidence to determine the age of the deceased. It is further submitted that merely because the Inquest report is not filed or PM report is not filed, it is not necessary to dismiss the claim petition. Now at this stage, the claimants have filed M.A.C.M.A.M.P. No. 3327 of 2014 praying this Court to receive the copy of PM report showing the age of the deceased as 35 years.

9. The learned counsel for APSRTC submits that such document cannot be

received at the appeal stage.

10. As seen from the evidence of P.W. 1-wife of the deceased, her age is shown as 34 years at the time of giving evidence in the year 2005. According to her, the deceased was aged about 32 years on the date of accident in the year 1999. Ex. A1 is the certified copy of FIR which shows that the deceased and other two persons died on the spot. Ex. A2 is the certified copy of charge sheet in which the particulars of the deceased are noted as follows; S. Sampath, 35 years, S/o. Swaminathan, Vaniyambadi, Vellore District, Tamilnadu. Thus, the age of the deceased has been mentioned in the charge sheet. The Tribunal ought to have gone through the records and read the documents filed before it, the Tribunal without reading the documents filed before it simply came to the conclusion that no documents have been filed showing the age of the deceased. The Judicial Officers are expected to read the entire evidence i.e., oral and documentary evidence before drawing any conclusions and particularly before dismissing the claim petitions. So, in view of the same, the age of the deceased is taken as 35 years at the time of his death. Though, several documents have been filed to show that the deceased was doing timber business, but admittedly no income tax returns have been filed. The claimants claimed that deceased was earning ` 70,000/- per annum. Having regard to the nature of business and the age of the deceased and the circumstances no documents have been filed to show that the deceased was having any agriculture, I consider just and reasonable to take the income of the deceased at ` 60,000/- per annum. Having regard to the number of dependants i.e., 4 dependants upon him, 1/4th is deducted towards the personal expenses of the deceased, the loss of earnings comes to ` 45,000/- and the appropriate multiplier is "16". The loss of dependency comes to ` 45,000/- x 16 = ` 7,20,000/-. The 1st claimant is entitled to a sum of ` 1,00,000/- towards loss of consortium. The claimants are also entitled to a sum of ` 25,000/- towards funeral expenses. The minor children i.e., claimant Nos. 2 and 3 are entitled to a sum of ` 1,00,000/- towards loss of care and guidance. Thus, the total compensation of ` 9,45,000/-.

11. In view of the latest judgment of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, , irrespective of the claim claimed by the claimants, the Courts have to award just and reasonable compensation.

12. Accordingly, the appeal is allowed awarding compensation of ` 9,45,000/- and the rate of interest is at 9% per annum from the date of petition till the date of realization. Out of the total amount awarded the 1st claimant shall take ` 3,00,000/-, claimants 2 & 3 shall take each ` 2,50,000/- and remaining amount of ` 1,45,000/- shall be paid to the 4th claimant. No costs. However, the claimants have to pay deficit Court fee before drafting the decree. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.