
(2010) 03 AP CK 0013
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 2542 of 2005

Setty Chandra Sekhar and another	Vs	APPELLANT
Mohd. Ghouse and another		RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 2403

Hon'ble Judges : Noushad Ali, J;N.V. Ramana, J

Bench : Division Bench

Advocate : K.L.N. Rao, for the Appellant; Kota Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramana, J.—This M.A.C.M.A. is directed against the award dated 7.7.2005, passed by the learned First Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal at Mahabubnagar (for short "the Tribunal") in O.P. No. 246 of 2001.

2. The appellants are the claimants. They filed the O.P. u/s 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 15,00,000 for the death of their son, Setty Audithya, in a motor accident that occurred on 6.3.2001 due to rash and negligent driving of the driver of the auto bearing registration No. AP 22-U 268. The said auto is owned by respondent No. 1 and insured with the respondent No. 2.

3. The respondent No. 1 has remained ex parte. The respondent No. 2 insurance company filed counter denying the allegations regarding the accident and quantum of compensation claimed.

4. Before the Tribunal, on behalf of the appellants, the appellant No. 1 himself was examined as PW 1 and also examined PW 2, apart from marking Exhs. A1 to A21. On behalf of the respondent No. 2, insurance company, none were examined, but Exh. B1, certificate of insurance, was marked.

5. The Tribunal, after taking into consideration the material placed on record, while holding that the accident occurred due to rash and negligent driving of the driver of the auto, resulting in the death of the deceased, granted a sum of Rs. 4,85,000 as compensation under various heads. Not satisfied with the quantum of compensation awarded, the appellants-claimants filed this M.A.C.M.A.

6. The contention of learned counsel for the appellants is twofold. Firstly, he contended that the deceased was studying Engineering III year and as such, Tribunal ought to have taken at least Rs. 7,000 p.m. as earning capacity of the deceased. In support of his contention, he relied upon the decision of a Division Bench of this court in the case of B. Ramulamma v. Venkatesh Bus Union, 2011 ACJ 1702 (AP). Secondly, he contended that the Tribunal, having recorded a finding that the appellants produced evidence that they had spent more than Rs. 2,80,000, committed an error in awarding only Rs. 1,60,000 under the head medical expenses.

7. Per contra, learned counsel appearing for the respondent No. 2, insurance company, contended that as against the judgment of the Division Bench of this court in B. Ramulamma, 2011 ACJ 1702 (AP) , SLP is preferred by the insurance company, and as such, the ratio laid down therein should not be taken into consideration while determining the income of the deceased. He further contended that as the deceased was studying B. Tech III year, the family background and income of his parents have to be taken into consideration while awarding compensation. In support of his argument that when parents are the claimants, the age of the deceased is not relevant and it is the age of the claimants which would determine the multiplier to be adopted, he relied upon the judgment of the Apex Court in the case of Maharashtra State Road Transport Corpn. Vs. Lalnipuii, In support of his argument that application of relevant multiplier depends upon the facts and circumstances of each case, he relied on the judgment of Delhi High Court in Jyoti Kaul and Others Vs. State of M.P. and Another, Relying upon the decision of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the learned counsel contended that while arriving at the contribution of the deceased to the family, 50 per cent of his earnings should be deducted towards his personal expenses. He submitted that while determining the quantum of compensation, no decision can be taken to be of binding precedent and that each case has to be dealt with on its own facts, and in support of this argument, he relied on the judgment of the Supreme Court in M.S. Grewal v. Deep Chand Sood, 2001 ACJ 1719 (SC). In support of his argument that dependency has to be worked out on the basis of the earnings of the deceased at the time of accident, he relied on the judgment of the Apex Court in Bijov Kumar Dugar v. Bidyadhar Dutta, 2006 ACJ 1058 (SC). He relied on the judgment of the Supreme Court in New India Assurance Co. Ltd. v. Satender, 2007 ACJ 160 (SC), to contend that unless the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived, compensation cannot be awarded. He submitted that since the deceased at the time of his death was studying and was not earning, his

income should have been assessed by the Tribunal on the basis of notional income of a non-earning person as fixed in the Second Schedule to the Motor Vehicles Act, and in support of this argument, he relied on the judgment of Supreme Court in Ponnumany v. V.A. Mohanan, 2008 ACJ 1338 (SC).

8. In reply, the learned counsel for the appellants submitted that if the income of the parents is taken into consideration, it would lead to serious anomalies and, therefore, the notional income of the deceased should be taken as criteria for fixing his future earnings. It is further submitted that while determining the relevant multiplier, the age of parents is to be taken into consideration. Relying upon the judgment in the case of B. Ramulamma, 2011 ACJ 1702 (AP), learned counsel submitted that the minimum income of the deceased should be taken as Rs. 12,000 per month, which is reasonable.

9. We have heard the learned counsel on either side at length and perused the material on record.

10. Admittedly, deceased was studying B. Tech III year at the time of accident. Tribunal considering the future prospects of the deceased, has taken the earnings of the deceased at Rs. 2,500 per month, and deducted one-third of the said amount towards his personal expenses, and taking into consideration the age of the father of the deceased, applied the multiplier of 15 and arrived at the loss of future income of the deceased at Rs. 3,00,000.

11. A Division Bench of this court in B. Ramulamma, 2011 ACJ 1702 (AP), considered the question as to what salary can be fixed for students who completed or are studying final year or last semester of B. Tech., B.E., B.C.A., M. Tech., M.E. or M.B.A., M.C.A. etc. and answered the same as follows:

... As far as the students, who completed or are in final year or last semester of B. Tech., B.E., B.C.A., M. Tech., M.E. or M.B.A., M.C.A., etc., courses and who died in motor accidents or sustained permanent disability, their salaries also can be fixed on the basis of the salary of their classmates, when they entered into jobs. Some percentage, say 10 per cent per year, can be deducted in respect of the students studying III year of II year as the case may be.

In view of the present salaries, being earned by Computer Engineers, there cannot be any doubt as to say that deceased would have minimum Rs. 12,000 to Rs. 15,000 per month. It has to be seen that nowadays IV class employees are also getting minimum Rs. 7,000 to Rs. 10,000 per month depending upon their service. The Junior Assistants are also getting Rs. 12,000 to Rs. 15,000 per month. Therefore, considering the normal scales being earned by government employees and also the minimum wage scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, who is holding a bachelor degree in computers or electronics or mechanical, can be taken as Rs. 12,000 per month. Therefore, the income of the graduates in engineering i.e., B. Tech., etc., cannot be fixed less than Rs. 12,000 per month, otherwise it amounts to neglecting the ground of reality...

12. From the above, it is clear that students, who completed or are in final year or last semester of B. Tech., B.E., B.C.A., M. Tech., M.E. or M.B.A., M.C.A., etc., courses and who died in motor accidents or sustained permanent disability, their salaries were fixed at Rs. 12,000 when they entered into jobs, and reduced the same by 10 per cent for each year in respect of the students studying III year or II year as the case may be.

13. Since the salary of a B. Tech. graduate can be fixed at Rs. 12,000 p.m. and having regard to the fact that the deceased at the time of his death in the accident was studying B. Tech. III year, by deducting 10 per cent, his salary can be fixed at Rs. 10,800 p.m. Though learned counsel for the respondent No. 2, insurance company, has contended that SLP has been preferred against the judgment in B. Ramulamma, 2011 ACJ 1702 (AP), the fact remains that so far, no orders are pressed in the said SLP. That being so, we deem it appropriate to fix the salary of the deceased at Rs. 10,800 p.m. However, as per the judgment of Apex Court in Sarla Verma, 2009 ACJ 1298 (SC), 50 per cent of the income should be deducted for personal and living expenses, and if the said 50 per cent is deducted from the salary of the deceased, the net loss of income to the claimants due to the death of the deceased would come to Rs. 5,400 p.m., which comes to Rs. 64,800 per annum.

14. The learned standing counsel for respondent No. 2 relying on Maharashtra State Road Trans. Corpn., 2007 ACJ 561 (SC), contended that for the purpose of determining the multiplier, the age of the mother should only be adopted, but in the said case, the Apex Court has categorically held that where the parents are the claimants, age of the deceased is not relevant and the age of the claimants would only determine the multiplier and took the age of the mother into consideration as she was the only claimant in that case. Hence, there is no illegality committed by the Tribunal in taking into consideration the age of the father of the deceased and adopting the multiplier of 15.

15. If the loss of income due to death of the deceased to the claimants which is determined at Rs. 64,800 is multiplied by the multiplier 15, the compensation would work out to Rs. 9,72,000.

16. Insofar as the compensation awarded for the medical expenses is concerned, it is to be noted that immediately after the accident, the deceased was shifted to the Government Hospital, Mahabubnagar by the appellants and after taking first-aid, the deceased was shifted to Udaya Clinic, Hyderabad for expert treatment and on the next day, he was shifted to Apollo Hospital, Hyderabad for further treatment, where his right leg was completely amputated up to the thigh. But, however, the deceased succumbed to the injuries on 14.3.2001 while undergoing treatment at Apollo Hospital, Hyderabad. Appellants filed medical records and bills in this regard. As rightly contended by the learned counsel for the appellants, though the Tribunal has recorded a finding that the appellants produced evidence showing that they have spent more than Rs. 2,80,000, it has granted only Rs. 1,60,000, which is not correct. In the circumstances, we are of

the considered opinion that the appellants are entitled to Rs. 2,80,000 under the head medical expenses.

17. In the result, the M.A.C.M.A. is allowed partly enhancing the compensation under the head of loss of future income of the deceased from Rs. 3,00,000 to Rs. 9,72,000 and from Rs. 1,60,000 to Rs. 2,80,000 under the head of medical expenses. Apart from that the claimants are also entitled to Rs. 10,000 towards loss to the estate, Rs. 5,000 towards transport charges, Rs. 5,000 towards visitors and attendant charges and Rs. 2,500 towards funeral charges, as awarded by the Tribunal. Thus, in all, the claimants will be entitled to Rs. 12,74,500. So far as interest is concerned, the claimants are entitled to 9 per cent per annum on the amount awarded by the Tribunal, but so far as enhanced amount is concerned, it shall carry interest at the rate of 6 per cent per annum. There shall be no order as to costs.