
(2008) 03 AP CK 0059
In the Andhra Pradesh High Court
Case No : CMA No. 1954 of 2002

Shaik Lalbi and Another

APPELLANT

Vs

M. Balakrishnan and Another

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)
Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 110A, 110B, 110C, 110D, 110E

Citation : (2009) ACJ 498 : (2008) 3 ALD 636

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : N. Subba Rao, for the Appellant; A. Malathi, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri N. Subba Rao, learned Counsel representing the appellants and Smt. A. Malathi, learned Counsel representing second respondent.

2. Sri N. Subba Rao, learned Counsel representing the appellants would maintain that the order made by the Motor Vehicles Accidents Claims Tribunal, Guntur-cum-II Additional District Judge, Guntur (hereinafter referred to as "the Tribunal" for the purpose of convenience) is contrary to the provisions of the Motor Vehicles Act (hereinafter referred to as "the Act" for the purpose of convenience). Learned Counsel would submit that the Tribunal failed to appreciate that as per Section 166 of the Act, the legal representatives of the deceased would be entitled to make an application for award of compensation. The Counsel would also submit that clear view had been expressed by the Apex Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, and in the light of view expressed, the brothers and sisters of the deceased also would be entitled to claim compensation. Learned Counsel also further explained the scope and ambit of Section 140 of the Act and would maintain that in the facts and circumstances of the case the appellants-claimants are entitled to the no fault liability and negating the relief cannot be

sustained. The Counsel also relied upon certain decisions to substantiate his submissions.

3. On the contrary learned Counsel Smt. A. Malathi, representing second respondent would maintain that in the facts and circumstances of the case and also in the light of the decisions in Smt. Manjuri Bera v. The Oriental Insurance Company Ltd 2007 (3) ALD 55 : 2007 (1) DT 413 and Mrs. Hafizun Begum v. Md. Ikram Heque 2007 (1) DT 645 SC) : 2007 AILD 201 (SC), the scope and ambit of the expression "legal representatives" in a way had been broadened as far as no fault liability is concerned. Heard the Counsel on record and perused the oral and documentary evidence available on record and also the findings recorded by the Tribunal. The parties hereinafter would be referred to as claimants-petitioners and the respondents as shown in M.V.O.P. No. 146 of 1999 on the file of the Tribunal.

4. The petitioners are the sisters of deceased Shaik Lateef have filed aforesaid M.V.O.P. No. 146 of 1999 under the Act for grant of compensation of Rs. 85,000/- for the death of Shaik Lateef S/o Madar in a Motor Accident, which occurred on 18.10.1998 at about 6-00 p.m. while the deceased Shaik Lateef was sitting on the road, backside of RTC Bus stand, the driver of the first respondent Jeep bearing No. AP-7-W-1613, drove the jeep in a rash and negligent manner, without following the traffic rules, dashed and deceased Shaik Lateef who died soon after the accident, on the spot. Macherla Police registered a case in Crime No. 203/98, post-mortem was conducted and inquest was held on the body of the deceased. The deceased was aged about 55 years and was hale and healthy at the time of the accident. He used to work as coolie and earn Rs. 40/- per day. He died unmarried, leaving his sisters-petitioners as his dependants and legal representatives. Petitioners lost their dependency and income due to the death of the deceased. They spent Rs. 10,000/- for his funerals and obsequies. Petitioners are entitled to claim compensation of Rs. 85,000/-. Both the respondents are jointly and severally liable to pay the compensation.

5. First Respondent filed written statement denying the allegations and denying the stand that the said first respondent handed over the Jeep No. AP 7W-1613 to his driver Govada Rammohana Rao instructing him to take the passengers to Nagarjuna Sagar for hire, and the first respondent came to know that on the return journey the driver took the jeep to his house at Macherla and the accident took place thereon. The jeep was insured with the second respondent and the policy is in force as on the date of accident.

6. The second respondent filed written statement denying the allegations and further had taken a specific stand that the claim made by sisters of the deceased is not maintainable as they are neither dependents, nor legal representatives of the deceased. There was no loss of income to them on account of the death of their deceased-brother as they were dependants on their respective husbands and they are earning members by themselves. The income of the deceased, if any would hardly be sufficient for his maintenance. The second respondent

liability would arise on proof of valid driving license of the driver of Jeep AP-7W-1613 and subject to the terms and conditions of the insurance policy. The deceased Shaik Lateef was alone responsible for the accident in sitting on the road. He had contributed negligence in sitting on the road, which is not intended for sitting. There was no negligence on the part of the driver of the Jeep. Hence, the respondents are not liable for payment of any compensation to the petitioners.

7. On the strength of the pleadings the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of Jeep bearing No. AP 7W-1613?

2. To what compensation the petitioners are entitled and from whom?

3. To what relief?

8. On behalf of the petitioners-claimants PWs. 1 to 3 were examined and Exs.A. 1 to A.5 were marked. Likewise RWs. 1 and 2 were examined and Exs. B1 to B5 were marked on behalf of the respondents.

9. The Tribunal while answering Issue No. 1 appreciated the oral and documentary evidence and came to a conclusion that the Tribunal has no other option except to hold that the accident occurred due to rash and negligent driving of the driver of the offending Jeep. While answering Issue No. 2 the Tribunal appreciated the oral and documentary evidence and recorded findings at Paras 10 to 16 and further recorded a finding that it cannot be said that the petitioners-sisters are actual dependents on the income of the deceased and ultimately dismissed the O.P. Aggrieved by the same, the present appeal had been preferred.

10. The petitioners-claimants examined themselves as PWs.1 and 2 respectively apart from this evidence of PWs.1 and 2, Ex A1 certified copy of F.I.R. Ex.A2 certified copy of post-mortem Certificate. Ex.A3 certified copy of Motor Vehicle Inspector Report. Ex.A4 certified copy of charge-sheet and Ex.A5 certified copy of Inquest report were marked. It is needless to say that Tribunal below also came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending jeep. Hence as far as this aspect is concerned no further elaborate discussion need be done. As against this evidence, the evidence of RWs. 1 and 2 is available on record. Ex.B1 is the policy copy. Ex.B2 is office copy of registered notice issued by respondents. Ex.B3 is postal acknowledgement of respondent No. 1. Ex.B4 is office copy of registered notice issued by respondent No. 2 to respondent No. 1 driver. Ex.B5 is the investigator report.

11. The stand taken by the claimants-petitioners is that they are the sisters of deceased Shaik Lateef and he died unmarried. No doubt, it is pointed out and that in Column No. 6 it is shown that the deceased Shaik Lateef was married and his wife predeceased him. May be this would not seriously alter the situation. The

evidence of PWs.1 and 2 is clear and categorical and the decisions in United India Insurance Co. Ltd., Kakinada Vs. Namala China Apparao And Others, and United India Insurance Company Limited Vs. M. Ramulu and others, , had been relied on and the same had been referred to by the Tribunal.

12. In Gujarat State Road Transport Corporation's case (supra), the Apex Court at Para 11 observed:

We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110B of the Act amongst the legal representatives for whose benefit an application may be filed u/s 110-A of the Act have to be done in accordance with well known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread winner of the family and if the bread winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition u/s 110-A of the Act if he is a legal representative of the deceased.

13. Further reliance had been placed on Mrs. Hafizun Begum's case (supra), the Apex Court observed at Paras 11, 12, and 13.

According to Section 2(11) of Code of Civil Procedure, 1908 (in short the "CPC") "legal representative" means a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. u/s 2(1)(g).

As observed by this Court in custodian of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, , the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to

legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in *Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another*, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

There are several factors, which have to be noted. The liability u/s 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the qualification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Further reliance was placed on *Smt. Manjuri Bera v. The Oriental Insurance Company Ltd.* (supra), wherein at Paras 10, 11 and 12 it was observed.

According to Section 2(11) of C.P.C., "legal representatives" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e., u/s 2(1) (g).

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15. The Counsel on record both Sri N. Subba Rao and Smt. A. Malathi had not advanced any further submissions except this question. In the light of the factual findings recorded by the Tribunal this Court is also of the opinion that this is only question to be decided in the present appeal.

16. In the light of view expressed by the Apex Court referred to supra, this Court is of the considered opinion, the view taken by the Tribunal that the claimants would not fall within the meaning of dependants cannot be a sustainable view and accordingly, the same is hereby set aside and this appeal is allowed to the extent of Rs. 50,000/- (Rupees fifty thousand only) under no fault liability at interest of 9% per annum.

17. No order as to costs.