

(2001) 03 AP CK 0105
In the Andhra Pradesh High Court
Case No : A.A.O. No. 99 of 2000

Shoba Rani and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2002) ACJ 1682 : (2001) 3 ALT 739

Hon'ble Judges : Motilal B. Naik, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : K. Subramanyam Reddy for K.V. Raghava Reddy, for the Appellant;
Kota Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—This appeal is directed against the order and decree dated 26-6-1999 made in O.P. No. 533 of 1994 by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad whereby the claim of the appellants herein seeking a compensation of Rs. 10,00,000/- for the death of S. Jitendarnath, husband of first appellant and father of appellants 2 to 4 in an accident which took place on 31-12-1993, is dismissed.

2. The brief averments in O.P. No. 533 of 1994 which was filed by the appellants-claimants on the file of the Tribunal below are traced as under:

Appellant No. 1 is the wife of late S. Jitendarnath and appellants 2 to 4 are their children. Late S. Jitendarnath was aged 40 years and was earning Rs. 6,150/- as Agricultural Officer and he was contributing his entire earnings for the maintenance of his family. On 31-12-1993, at about 9.00 p.m. the deceased Jitendarnath was going on his motor cycle from Varni side towards Nizamabad. On the way, a Maruti car bearing No. A.P. 25/4545 owned by the second respondent, driven by its driver in a rash and negligent manner at high speed

dashed against the deceased Jitendarnath near Venkateshwara temple on the road from Varni to Nizamabad in the outskirts of Morsa village, as a result of which the deceased Jitendarnath sustained grievous injuries on his head and all over his body. He was taken to the Government Hospital, Nizamabad and on the next day he was referred to Nizams Institute of Medical Sciences at Hyderabad for better treatment. However, he succumbed to the injuries on 10-1-1994. On the complaint given by S. Vijayendernath, the S.H.O. of Panjagutta Police Station, Hyderabad registered the case in Crime No. 15/94 u/s 174 Cr.P.C. on 10-1-1994 at 1.00 p.m. and issued Ex.A-3 (F.I.R.).

3. Appellants-claimants averred that they/were all dependents on the earnings of late S. Jitendarnath and on account of his untimely death, they were deprived of their livelihood. The appellants, therefore, claimed a total compensation of Rs. 10,00,000/- against the respondents under various heads with costs and interest at the rate of 12% per annum from the date of accident till the date of realization.

4. The first respondent filed a detailed counter wherein it is contended that the deceased himself dashed his vehicle to one wild boar (forest pig) near Venkateswara Gutta with the result, the wild boar died on the spot and the deceased sustained fracture injuries and till the death of the deceased, there was no whisper about the deceased meeting with any accident involving any car or any vehicle other than his own motor cycle. It is further alleged in the counter that there is a conspiracy between the claimants and the police and launching of criminal proceedings is collusive. It is complained in the counter that the second respondent is in the habit of making claims against the Insurance Company for the past five years and he connived and colluded with the claimants and got foisted a false claim against the Insurance Company. The first respondent-Insurance Company denied its liability to pay compensation to the claimants and prayed for dismissal of the petition.

5. The second respondent who is the owner of the offending car involved in the accident, however, remained ex parte.

6. On the basis of the above pleadings, the Tribunal below framed the following issues, viz.,

(1) Whether the accident was due to the rash and negligent driving of the driver of the car A.P. 25/4545?

(2) Whether the person driving the car at the time of the accident is having valid driving licence?

(3) Whether the vehicle car is insured with the Insurance Company-first respondent and whether the policy is in force on the date of the accident?

(4) Whether the petitioners are entitled to compensation? If so, to what amount and against whom?

(5) To what relief?

7. In support of their claim, the claimants examined P.Ws.1 to 3 and marked Exs.A-1 to A-15. On behalf of the respondents, R.Ws.1 to 4 were examined and Exs.B-1 to B-5 were marked.

8. The Tribunal below on a consideration of the oral and documentary evidence came to the conclusion that P.W.2 who is stated to be the eye-witness to the accident is an interested person who spoke in favour of the appellants at the behest of the second respondent. The Tribunal further held that the possibility of the second respondent colluding with the claimants could not be ruled out. By holding so, the Tribunal below came to the conclusion that the deceased died not on account of the rash and negligent driving of the car A.P. 25/4545 and dismissed the petition filed by the claimants by an order dated 26-6-1999, against which the present appeal is filed.

9. Sri Subrahmanya Reddy, learned senior Counsel along with Sri K.V. Raghava Reddy, Counsel for the appellants-claimants submitted that when a claim is made u/s 166 of the Motor Vehicles Act by the appellants-claimants before the Tribunal below seeking compensation for the death of the deceased and when there is positive evidence about the accident having taken place which resulted in the death of the deceased on account of the rash and negligent driving of the Maruti Car bearing No. AP 25/4545, the Tribunal is bound to appreciate the evidence in proper perspective and award reasonable compensation. Learned senior Counsel submitted that the conclusion drawn by the Tribunal below that there is a collusion between the claimants, second respondent and P.W.2 who claims to have witnessed the incident, is based on surmises and conjectures and cannot be sustained. Learned senior Counsel also submitted that when there is positive evidence adduced by the claimants about the occurrence of the incident in which the deceased lost his life on account of the rash and negligent driving of the Maruti Car by P.W.3, the Tribunal below erred in not appreciating the said evidence, more so, in the absence of evidence to the contrary adduced by the respondents. Learned Senior Counsel pointed out that the evidence of P.W.2 who is an eye-witness to the incident is independent and trustworthy and the evidence of P.W.3 who is none other than the driver of the offending car which caused the accident also spoke about the manner in which the accident took place and the Tribunal below in an erroneous manner disbelieved their evidence, which according to the learned Senior Counsel is improper. Learned Senior Counsel submitted that in any view of the matter, when there is a positive evidence adduced by the claimants which, clinchingly points out that the deceased died on account of the rash and negligent driving of the offending Maruti Car by P.W.3, the Tribunal below ought to have awarded the compensation as claimed by the claimants. Learned Senior Counsel, therefore, prays for setting aside the impugned order and allowing the appeal by granting appropriate compensation to the claimants.

10. On the contrary, Sri Subba Rao, learned Counsel appearing on behalf of the first respondent-Insurance Company submitted that the Tribunal was justified in

denying compensation to the claimants as the evidence adduced by the claimants falls short of proving that the deceased died on account of the rash and negligent driving of the Maruti Car by its driver P.W.3. According to the Counsel, the deceased has died on account of dashing his vehicle to a wild boar and the Tribunal below taking this factor into consideration has rightly dismissed the claim of the appellants. Counsel, therefore, prayed for dismissal of this appeal. Alternatively, learned Counsel submitted that if this Court comes to a conclusion that the deceased died on account of the rash and negligent driving of the Maruti Car in question and the claimants are entitled for just and reasonable compensation, the matter could be remitted back to the Tribunal below for deciding the quantum of compensation to be awarded to the claimants.

11. In the wake of the above submissions, the point that arises for our determination is viz.,

"Whether the appellants-claimants have proved that the deceased died on account of the rash and negligent driving of the Maruti Car AP 25/4545 by P.W.3?"

12. The appellants-claimants who are the legal heirs of the deceased S. Jitendernath who died in a motor accident, have filed the claim petition in O.P. No. 533 of 1994 seeking a compensation of Rs. 10,00,000/-with interest at 12% per annum. In order to substantiate their claim, the appellants have examined P.Ws.1 to 3 and marked Exs.A-1 to A-15. We shall now scrutinize their evidence in order to find out whether the accident in question in which the deceased lost his life is proved or not.

13. P.W.1-S. Shoba Rani is the wife of the deceased. She deposed that her husband died in an accident due to the rash and negligent driving of the car No. AP 25/4545-near Venkateshwara temple on the road from Varni to Nizamabad. She further deposed that her husband was aged 40 years at the time of his death and was earning Rs. 6,100/- towards his salary being an Agricultural Officer and was contributing his entire earnings for the maintenance of the family. Though P.W.1 stated that her husband died in the accident on account of the rash and negligent driving of the car No. AP 25/4545 by P.W.3, however, as she is not an eye-witness to the incident, which she herself admitted in her cross-examination, much reliance cannot be placed on this aspect of her evidence. However, the crucial witness who is said to have witnessed the accident in question is. P.W.2 - Pitla Gangadhar "who is an agriculturist and resident of Mosra village under Varni Mandal in Nizamabad District. According to him, on 31-12-1993, at about 9.00 p.m. he was returning from his fields towards his house in Mosra village. When he reached Venkateswara gutta, he saw the motor cycle No. AP 25/5678 driven by the deceased Jitendarnath coming in front of the car No. AP 25/4545 from Varni side and near Venkateswara gutta the car hit the motor cycle from behind on account of which the motor cyclist (deceased) fell down on the road on the left side and sustained bleeding injuries to his head. He further deposed that thereafter the offending car stopped at the accident place and after seeing the bleeding injuries on the deceased, the car fled away. P.W.2

further deposed that the accident took place on account of the rash and negligent driving of the driver of the car bearing No. AP 25/4545. He stated that seeing the condition of the injured (sic. Deceased), he rushed to the village and informed the accident to the Village Administrative Officer - Sri Ganga Reddy and other villagers who then rushed to the place of accident. He further stated that about two months after the accident, police came to their village and enquired about the accident. In his cross-examination, P.W.2 denied a suggestion that he found a wild boar in front of the motor cycle of the deceased Jitendarnath. He also stated that the motor cycle was Kawasaki make and he did not stop the driver of the car. He further stated in his cross-examination that he informed about the accident in question to the V.A.O. Sri Ganga Reddy and other villagers and he also gave the number of the motor cycle and car to them on that day itself. He further deposed that the injured became unconscious. He also categorically denied a suggestion that the deceased died on account of dashing his vehicle against a wild boar and he did not witness the incident.

14. P.W.3 is one Abdul Jabbar, resident of Rakasipet area of Bodhan town in Nizamabad District. He deposed that on 31-12-1993 he took his family in the Maruti Car No. AP 25/4545 belonging to the second respondent from Nizamabad to Banswada to see his relatives. He left his family members in the house of his relatives at Banswada and was returning on the same day to Nizamabad. When he reached the outskirts of Mosra village, the motor cycle No. AP 25/5678 was ahead of him. He deposed that in the process of his car overtaking the motor cycle near Venkateshwara temple, his car dashed against the motor cycle due to which the motor cycle and the motor cyclist fell down on the left side of road from Mosra towards Nizamabad. He further deposed that he stopped his car and found bleeding head injuries on the motor cyclist. As there were some villagers coming from Mosra village, he fled to Nizamabad. He further testified that he did not inform about the incident either to the second respondent or to the police. In his cross-examination, P.W.3 deposed that his driving licence is valid from 27-5-1980 to 26-5-2001 issued by Additional Licensing Authority, Nizamabad. He denied a suggestion that on 31-12-1993, he never drove the car from Banswada to Nizamabad and that he never dashed against the deceased.

15. On behalf of the respondents, R.Ws.1 to 3 were examined. R.W.1 K. Murali is the Head Constable at Police Station PCRP, Nizamabad. He deposed that on 1-1-1994 he was in-charge Head Constable of Police Out-post at Govt. Headquarters Hospital, Nizamabad. He deposed that the injured Jitendarnath was brought by the V.A.O. Ganga Reddy to Govt. Hospital. He spoke about recording the statement of the son of the injured (deceased) and sending the same to One Town Police Station, Nizamabad. R.W.2-Y. Ganga Reddy deposed that on 31-12-1993 at about 9.00 p.m. the village servant Hameed came and informed him that he found an injured person with a motor cycle and dead wild boar on the road side of Venkateshwara gutta. He further deposed that on receiving the said information, he along with others went to the accident scene. Similar is the evidence of R.W.3 - Abdul Hameed who spoke that he was working as Village

Servant of Mosra village, on 31-12-1993 at about 8-30 p.m., while he was taking tea in a tea-stall, a person came and informed him and others that there was an injured person with motor cycle on the road near Venkateshwara gutta of Mosra village, thereupon he went to the spot and found the injured with motor cycle and dead wild boar on the centre of the road from Mosra to Nizamabad. Then he returned to VAO and informed him about the same who in turn came along with him to the accident spot.

16. It is thus clear from the evidence of R.Ws.1 to 3, as per their own admission, that they are not the eye-witnesses to the occurrence and what all they spoke about the incident is that they heard through somebody that the deceased met with an accident near Venkateswara Gutta around 8.00 to 8.30 p.m. on 31-12-1993. Since these witnesses who were examined on behalf of the respondents are not the eye-witnesses to the occurrence, it is difficult to place reliance on their testimony. On the contrary, the evidence of P.W.2 who is an eye-witness to the accident categorically spoke that the deceased was hit from behind by the offending Maruti Car AP 25/4545 on 31-12-1993 in a rash and negligent manner on account of which the deceased fell down from his motor cycle and sustained grievous injuries. The testimony of P.W.2 has been fully corroborated by the evidence of P.W.3 who is none other than the driver of the offending Maruti Car AP 25/4545 which caused the accident. P.W.3 who drove the offending Maruti Car narrated the manner in which the accident had taken place and he admitted that on account of his rash and negligent driving only, the car driven by him hit the deceased from behind on account of which the deceased sustained grievous injuries and later succumbed to his injuries. Though P.Ws.2 and 3 were cross-examined at length on behalf of the respondents, nothing has been elicited from them to discredit their disinterested testimony. The evidence of P.W.2 is fully corroborated by P.W.3 in all material aspects. As P.Ws.2 and 3 narrated the manner in which the deceased sustained injuries in the accident and who subsequently succumbed to his injuries and in the absence of any contradictions brought out in their testimony by the respondents, we are of the view, the evidence of P.Ws.2 and 3 cannot be disbelieved.

17. Though it is contended on behalf of the respondent No. 1 that there is a collusion between the claimants, P.W.2, P.W.3 and the second respondent on account of which P.W.2 claimed that he has witnessed the accident and P.W.3 claiming that it is he who caused the death of the deceased by his rash and negligent driving, we are not inclined to accept the same inasmuch as except making mere allegation, no tangible evidence is placed on behalf of the first respondent which is suggestive of a collusion between the claimants, P.Ws.2 and 3 and the second respondent. On the contrary, P.W.3 who caused the accident by his rash and negligent driving of the offending Maruti Car AP 25/4545, has been arrested by the police of Varni PS in connection with Crime No. 17 of 1994 for causing the said accident, which factor is evident from Ex.A-5 - copy of the FIR in the said crime. This is another factor which is indicative of the fact that P.W.3 has caused the accident on account of his negligent driving of the offending Maruti

Car in which the deceased has lost his life. In fact P.W.3 was imposed a fine of Rs. 3,000/- by the J.F.C.M., Bodhan in C.C. No. 134/94 on plea of guilty for committing an offence u/s 304-A of I.P.C.

18. Having regard to our above discussion, we hold that the deceased S. Jithendarnath died on account of the rash and negligent driving of the offending Maruti Car AP 25/4545 by P.W.3.

19. It is submitted by the learned Counsel for the first respondent that in the event of this Court coming to the conclusion that the deceased died on account of the rash and negligent driving of the Maruti Car by P.W.3, the matter may be remitted back to the Tribunal below for awarding just and reasonable compensation. We do not think, such a procedure could be followed in the instant case. It is no doubt true that when an appellate Court finds that the finding of the Tribunal below is not based on any evidence and the evidence on record is not sufficient to effectively adjudicate the issues involved, then the matter could be remitted back permitting the parties to lead evidence on which basis the Tribunal below would decide the matter on merits. In the instant case, we are of the view, such contingency does not arise having regard to the fact that the appellants-claimants have adduced sufficient evidence on record, as discussed above in the foregoing paragraphs, to prove that the deceased died on account of the rash and negligent driving of the offending Maruti Car by P.W.3. We are of the further view that as there is sufficient material available on record for determining the just and reasonable compensation to which the claimants are entitled we see no reason for remitting the matter back to the Tribunal below. We, therefore, reject the submission advanced on behalf of the first respondent in this regard.

20. The next question is what is the reasonable compensation for which the appellants-claimants are entitled to?

21. It is brought on record that the deceased was aged 40 years at the time of his death and he was working as an Agricultural Officer drawing a salary of Rs. 6,150/- per month. As the deceased was aged only 40 years at the time of his death and would have secured future promotions in his service had he been alive, we are of the view, the multiplier to be adopted in the case could be 14. Ex.A-14 which is the salary certificate of the deceased shows that the deceased was drawing a monthly salary of Rs. 6,150/-. If 1/3rd amount is deducted from this amount towards the personal expenses of the deceased, then the net contribution of the deceased to his family per month would be Rs. 4,100/- (Rs. 6,150 -Rs. 2,050) and per annum it would be Rs. 49,200/-. By applying the multiplier 14, the loss of earnings would be Rs. 6,88,800/-(Rs. 49,200 x 14). This apart, the first claimant being the wife of the deceased is entitled for a sum of Rs. 15,000/- towards consortium. Another sum of Rs. 15,000/- has also to be awarded to the appellants for loss of estate. As per the evidence of P.W.1, she incurred an expenditure of Rs. 15,000/-towards transportation of the deceased from Nizamabad to NIMS Hospital, Hyderabad and from there to Nizamabad. We

are of the view, an amount of Rs. 10,000/- could be granted to the appellants towards transportation charges. P.W.1 also deposed that for the treatment of the deceased in NIMS, Hyderabad, she incurred medical expenses for which she filed medical receipts dated 5-1-1994, 3-1-1994, 6-1-1994 and 10-1-1994 issued by NIMS, Hyderabad for Rs. 2,000/-, Rs. 18,000/-, Rs. 4,000/- and Rs. 10,897/- (totalling to Rs. 34,897/-) under Exs.A-10 to A-13 respectively. We are of the view, the appellants-claimants are entitled for the said sum of Rs. 34,897/- towards medical expenses. Thus, in all, the appellants-claimants are entitled for the following amounts under various heads, viz.,

(a) Loss of earnings Rs. 6,88,000/- (b) Loss of consortium (to First appellant) Rs. 15,000/- (c) Loss of Estate Rs. 15,000/- (d) Transportation charges Rs. 10,000/- (e) Medical expenses Rs. 34,897/- Rs. 7,62,897/-

22. Thus, in all, the appellants-claimants are entitled to a total amount of Rs. 7,62,897/- (Rupees seven lakhs sixty two thousand and eight hundred and ninety seven only).

23. On this amount, the appellants-claimants are entitled to seek interest. In their claim petition, appellants-claimants claimed interest at 12% per annum on the amount of compensation to be awarded to them from the date of the petition till the date of realization. However, learned Counsel appearing on behalf of the first respondent-Insurance Company by placing reliance on a decision of the Supreme Court in *Kaushnuma Begum v. Nezv India Assurance Company Limited*, (2001) 2 SCC 6 submitted that the appellants-claimants are entitled to claim interest only at 9% per annum on the amount of compensation granted to them and not 12% per annum. On the contrary, learned senior Counsel appearing on behalf of the appellants-claimants brought to our notice another decision of the Supreme Court, in *Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others*, and submitted that in this case a larger Bench comprising of three Hon'ble Judges of the Supreme Court held that a reasonable interest of 12% per annum could be granted to the claimants on the compensation amount awarded to them. Learned Senior Counsel further submitted that in *Kaushnuma Begum's* case cited (1 supra), which was referred to by the learned Counsel for the first respondent, though of recent one, but it was rendered by only two Hon'ble Judges of the Supreme Court and moreover, the decision of the three Hon'ble Judges in *Chameli Wati's* case (2 supra) has not been referred to in the said decision (1st supra) and therefore, submitted that in view of the decision of the three Hon'ble Judges in *Chameli Wati's* case (2 supra), the claimants are entitled interest at 12% per annum on the compensation amount.

24. It is true, in the decision (1st supra) which was relied upon by the learned Counsel for the first respondent, it was held that the claimants are entitled to interest at 9% per annum on the compensation amount awarded to them. However, in the said decision, no reference is made to the three Judges decision (2nd supra). We are, therefore, of the view that the larger Bench Decision of the Supreme Court (2nd supra) though earlier one, is binding on us as the same has

been rendered by three Hon"ble Judges. Following the same, we hold that the appellants-claimants are entitled for interest at 12% per annum on the total compensation amount of Rs. 7,62,897/- from the date of the petition till the date of realization.

25. Learned Counsel for the first respondent by referring to the recitals in Ex.B-4 submitted that the deceased was suffering from hypertension and diabetes and therefore, the appellants-claimants are not entitled for full compensation. We do not think, such a submission could be accepted inasmuch as human life is full of uncertainties and more so, when there is positive evidence that the deceased met his untimely death on account of rash and negligent driving of P.W.3, we see no reason to deny reasonable amount of compensation to the appellants-claimants on this ground.

26. There are four appellants-claimants before us. The first appellant-claimant is the wife of the deceased, aged 41 years and appellants-claimants 2 to 4 are their children who have attained majority and prosecuting their education. Since all these appellants-claimants are class-I heirs of the deceased, they are entitled to share the compensation amount of Rs. 7,62,897/- awarded by us equally. However, the first appellant being the wife of the deceased is entitled for a sum of Rs. 15,000/- towards consortium, over and above her share of compensation.

27. For the foregoing reasons, the impugned award of the Tribunal below made in O.P. No. 533 of 1994 dated 26-6-1999 is set aside. Consequently, this, appeal is allowed awarding a total compensation of Rs. 7,62,897/- along with interest at 12% per annum from the date of the O.P. till the date of realization. The respondents 1 and 2 are jointly and severally liable for the said amount and they shall deposit the said amount within a period of ten weeks from the date of receipt of a copy of this order. From out of the total compensation amount, the first appellant is entitled to withdraw 50% amount from out of her share and also Rs. 15,000/- awarded to her towards consortium. Appellants 2 to 4 who are stated to be prosecuting higher studies are also entitled to withdraw 50% amount from out of their shares. The rest of the compensation amount shall be kept in fixed deposit in the names of the appellants in any nationalized bank for a period of five years on which the claimants are entitled to draw accrued interest for every six months.

28. This appeal is accordingly allowed in the above terms. No costs.