

(2006) 10 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18547 of 2006

S.K. Dastagir and Others

APPELLANT

Vs

The Kagaznagar Municipality and Others

RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A(1), 166, 168
Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (2006) 10 AP CK 0012

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

Bench : Single Bench

Advocate : Vidyasagar, for the Appellant; Polisetti Radha Krishna, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri P. Ramakrishna Reddy, the learned Counsel representing the appellants and Sri Gopalakrishna, the standing Counsel representing R.2.

2. Both the Counsel advanced arguments relating to the correct multiplier to be applied in the facts of the given case and also made certain submissions in relation to Section 163-A of the Motor Vehicles Act, 1988 - the Second Schedule and the applicability thereof to the facts of the case.

3. The learned Counsel for the appellants would maintain that if the age of the deceased is to be taken into consideration in the light of the guidance given by the Second Schedule and Section 163-A of the Act aforesaid, the multiplier to be applied is "15" and however, the learned Chairman, Motor Accident Claims Tribunal - cum - IV Additional Chief Judge, City Civil Court, Hyderabad had applied the multiplier of "12" which cannot be sustained. The Counsel representing the appellants had placed reliance on certain decisions.

4. The learned standing Counsel representing R.2 would maintain that the Second Schedule is applicable to such persons whose annual income is up to Rs.

40,000/- and below Rs. 40,000/- and not more than thereto and hence, to the present case, the same cannot be made applicable. The learned standing Counsel also placed reliance on certain decisions.

5. The appellants herein are the claimants in O.P.No.1622/97 on the file of Motor Accident Claims Tribunal - cum - IV Additional Chief Judge, City Civil Court, Hyderabad. The respondents in the said O.P. are the respondents in the present C.M.A. The appellants - claimants are the wife, sons and mother of the deceased Radharamana Gupta, who filed O.P.No.1622/97, referred to supra, claiming total compensation of Rs. 8,00,000/-. The learned Chairman, Motor Accident Claims Tribunal - cum - IV Additional Chief Judge, City Civil Court, Hyderabad (here-in-after, in short, referred to as "Tribunal" for the purpose of convenience) applied multiplier of "12" and awarded total loss of earnings of Rs. 4,80,000/- and other quantum had been awarded towards consortium and loss of estate, but, however, in view of the fact that no documentary evidence had been let in showing the actual damage caused to the motor cycle, the same had been negatived and thus, in toto, the tribunal awarded compensation of Rs. 5,10,000/-. Aggrieved by the same, claiming for further enhancement of compensation, the claimants preferred the present C.M.A.

6. The facts in nutshell are as hereunder:

On 26-11-1997 at about 5.30 p.m., the deceased K.V. Radharamana Gupta was driving the motor cycle from Nalgonda to Hyderabad and his friend Koteswar Rao was the pillion rider and when they reached a place near Bata Singaram village on National High Way No. 9 and proceeding on the left side of the road slowly, the lorry bearing No. AAC-2719 was being driven by one A. Venkatarama Rao and the same was coming from Hyderabad side proceeding towards Vijayawada side. It is stated that the driver of the lorry drove the same in rash and negligent manner at high speed, dashed against another lorry and came to wrong side and dashed against the motor cycle. The deceased and his friend fell down. The deceased sustained grievous injuries and succumbed to injuries at the spot. The accident occurred due to the negligence of the lorry driver aforesaid. The matter was reported to the Police, Hayatnagar and a case in Crime No. 292/97 was registered under Sections 304-A and 337 I.P.C. It is stated that the deceased was aged about 43 years at the time of accident and he was hale and healthy prior to the date of the accident and he was working as Sales Manager in Surgi-Chem Pvt. Ltd., and he was getting a sum of Rs. 50,000/- per annum and Rs. 70,000/- per annum as Commission on sales and he was an Income Tax assessee. It is also stated that the claimants have been depending on the earnings of the deceased and they had lost the only source of livelihood and their life became dark and miserable and the first claimant also had lost consortium. It is also stated that the deceased was very intelligent and he was working hard, having bright future and he would have earned Rs. 20,000/- per month had he lived. R.2 is the owner of the lorry and R.2 is the Insurance Company with which the lorry was insured on the date of accident and hence

they are liable to pay compensation as claimed.

7. R.1 was set ex parte and R.2 filed counter denying the allegations. The age, occupation, income of the deceased and the relationship and other aspects had been denied. It was specifically denied that the accident occurred due to the negligence of the driver of the lorry in question AAC/2719. Certain other averments also were made in the counter.

8. On the strength of these pleadings, the following issues were settled by the Tribunal:

- 1) Whether the accident has taken place on account of rash and negligent driving of the driver of the lorry bearing No. AAC/2719?
- 2) Whether the petitioners are the L.Rs., of deceased and if so, whether they are entitled for any compensation and what amount?
- 3) Whether the 2nd respondent is not liable for any compensation?
- 4) To what relief?

9. The wife of the deceased - the first claimant examined herself as P.W.1 and one Koteswar Rao was examined as P.W.2. Ex.A.1 to Ex.A.13 were marked and none were examined on behalf of respondents, but the copy of the policy was marked as Ex.B.1. P.W.1 is not an eyewitness to the accident. Ex.A.1 is the certified copy of F.I.R.; Ex.A.2 is the certified copy of chargesheet; Ex.A.3 is the certified copy of scene of offence panchanama; Ex.A.4 is the certified copy of inquest; Ex.A.5 is the certified copy of postmortem report; Ex.A.6 is the certified copy of M.V.I. report; Ex.A.7 is the Certificate; Ex.A.8 is Income Tax Return acknowledgment; Ex.A.9 is the SSC certificate; Ex.A.10 is the Intimation of ITO; Ex.A.11 is the SSC certificate; Ex.A.12 is the SSC certificate; and Ex.A.13 is the SSC certificate of the deceased. P.W.1, no doubt, deposed about the other facts. P.W.2 and the deceased went to Nalgonda on the fateful day on their business and they were returning from Nalgonda. The deceased was driving the motor cycle bearing No. AP 28B 8597. P.W.2 was the pillion rider and it is needless to say that P.W.2 explained all the facts and circumstances which had been discussed in detail and the evidence of P.W.2 coupled with the documentary evidence would go to show that the accident, in fact, occurred due to the negligent driving of the lorry driver. The Tribunal had taken into consideration Ex.A.1, Ex.A.7, Ex.A.8, Ex.A.9 and also Ex.A.10 and on considering the over all facts and circumstances, came to the conclusion that it would be just and reasonable to take the income of the deceased as Rs. 60,000/- per annum and if 1/3rd is deducted towards his personal expenses, the net loss of earnings to the dependents would come to Rs. 40,000/- per annum and thus applied the multiplier of "12", and the total loss of earnings had been calculated as Rs. 4,80,000/-. The applicability of the multiplier "12" to the facts of the present case is being seriously assailed on several grounds. In all fairness, the Counsel representing the respective parties would submit that as far as other amounts

are concerned, there is no serious dispute or controversy.

10. Section 163-A of the Act reads as hereunder:

Special provisions as to payment of compensation on structured formula basis:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

The Second Schedule - SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENTS/INJURY CASES CLAIMS - the column : Annual Income, the maximum is shown as Rs. 40,000/-

In view of the same, submissions at length were made by the learned standing Counsel representing R.2 that inasmuch as the income of the deceased in the present case being more than Rs. 40,000/-, the said table in strict sense can not be made applicable. The Counsel placed strong reliance on A. Vijaya and Others Vs. Vegurla Rajaiah and Others, wherein the Division Bench of this Court held that Second Schedule -compensation on structured formula basis - multiplier to be applied to arrive at total loss of dependency - multiplier system be applied for calculation of amount of compensation - multiplier to be applied may change to some degree depending upon facts and circumstances of a case - structured formula in second schedule is only for those whose annual income is upto Rs. 40,000/- - in case of higher income, prescribed multiplier in column No. 2 of structured formula for the age group of victims is only a guidance - some deviation in the multiplier in such cases - not impermissible as multiplier was prescribed having the maximum income of Rs. 40,000/- per annum in mind - all columns where annual income exceeds Rs. 40,000/- be determined in terms of Chapter XII of the Act - deceased was aged about 50 years on the date of accident - proper multiplier for that age as per decision in Bhagwandas's case 1987 (2) A.L.T 137 - Tribunal adopted multiplier 8.25 keeping in view various factors of the case - multiplier adopted by Tribunal upheld - total loss of dependency assess on that basis - Held proper and it was held that there was no ground to enhance the loss of dependency.

11. However, the Counsel representing the appellants - claimants placed strong

reliance on the decision of the Division Bench in *Shahazadi Bee and Others Vs. The Managing Director, APSRTC and Another*, where the Division Bench had an occasion to consider Section 163-A (inserted by Amending Act 54/94) - rash and negligent driving - proof - after introduction of the said provision, claimants need not prove rash and negligent driving and it is sufficient if it is proved that accident occurred while vehicle was being used on road and it was further held while dealing with Sections 168 and 163-A (Second Schedule) and determination of compensation- death due to rash and negligent driving - deceased of age 40 years - Tribunal applied multiplier 12 and confirmed by appellate Court following decision in *Bhagwandas Vs. Mohd. Arif*, - under second schedule to Section 168 (inserted by Amending Act 54/94) multiplier to be applied for deceased persons, whose age is above 35 years but not exceeding 40 years, is 16 and above 40 years but not exceeding 45 years, is 15 - Held when compensation payable to deceased on mere user of vehicle is much higher than multiplier arrived at in *Bhagwandas* case, it is unreasonable to apply multiplier that was arrived at by Court way back in 1987 - multiplier shall not ordinarily exceed 18 - multiplier to be applied should be 14, but not 12.

12. On a reading of the decisions referred to supra, it appears that the Division Benches in a way had expressed conflicting views in the light of the income limit having been specified as Rs. 40,000/- in the Second Schedule. It is no doubt true that that the Second Schedule as such may not be applicable to the facts on hand. A three Judge Bench of the Apex Court in *Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another*, dealt with fatal accident and principles of assessment and the multiplier to be applied. In the said decision where the deceased was aged 32 and the Tribunal adopted multiplier of 15 and it was maintained by the High Court in appeal and where there was no claim u/s 163-A of the Act, it was held that the Second Schedule can be taken as a guideline and on the question whether appropriate multiplier would be "17", the question was answered in positive and affirmative. Apart from the said view expressed by the three Judge Bench of the Apex Court, reliance also was placed on the decision in *Chellammal v. Kailasam* 2006 ACJ, 854 wherein while dealing with the quantum to be fixed in a fatal accident where the deceased was aged 41 years and the claimant was widow and the Tribunal awarded Rs. 8,08,704/-. The High Court assessed dependency at Rs. 39,300/- per annum and adopted multiplier of 12 and allowed Rs. 4,71,600/- plus Rs. 20,000/- for loss of consortium, but the Apex Court adopted multiplier of 15 and allowed Rs. 5,89,500/- plus Rs. 20,000/- and the award enhanced to Rs. 6,09,500/-.

13. The Division Bench of Kerala High Court in *National Insurance Co. Ltd. Vs. Muneer*, while dealing with a similar question, while dealing with Section 163-A read with Second Schedule, Sections 166, 168 and 163-A along with Second Schedule and on the aspect of fixation of just compensation vis--vis structured formula, while answering the questions whether just compensation awarded in a claim u/s 166 can fall below the amount prescribed in structured formula u/s 163-A read with Second Schedule, the question was answered in the negative. In

Akshit Kumar Vs. Balbir Singh and Others, the learned Judge of Himachal Pradesh High Court while dealing with the principles of assessment in fixing the quantum of a fatal accident, it was held that the compensation payable u/s 166 of the Act should not be less than the minimum amount payable under structured formula u/s 163-A of the Act and it would be a travesty of justice if a person who proves negligence and income of the deceased is awarded lesser compensation than a person who neither proves negligence nor the income.

14. In the light of the decisions of the Apex Court referred to supra, it is needless to say that even in a case where the income exceeds Rs. 40,000/- as specified in the Table of the Second Schedule, the same can be taken as guidance for the purpose of assessing the quantum. The provisions relating to the compensation claims, being the claims thought of keeping in view the welfare of the dependants, the same may have to be construed with an element of liberality while adopting the guidelines. In the light of the same, this Court has no hesitation in arriving at the conclusion that even in cases where the income exceeds Rs. 40,000/-, as specified by the Table in the Second Schedule, the same can be taken as a guidance for the purpose of applying the multiplier. In view of the same, this Court is of the considered opinion that the learned Tribunal had not correctly applied the multiplier and instead of applying multiplier "15", the learned Tribunal applied multiplier "12" and if multiplier "15" to be applied, then instead of Rs. 4,80,000/- awarded by the Tribunal as loss of dependency, the quantum of compensation towards loss of dependency would come to Rs. 6,00,000/-. Accordingly, the quantum of loss of dependency granted at Rs. 4,80,000/- is modified to an amount of Rs. 6,00,000/- applying multiplier "15" and in all other respects, the findings are hereby confirmed. Accordingly, the award of the Tribunal is modified granting the total compensation of Rs. 6,30,000/-. However, in the peculiar facts and circumstances, the appellants - claimants are entitled to interest only 7.5% per annum on the enhanced compensation awarded by this Court.

15. Accordingly, the appeal is partly allowed to the extent indicated above.

No costs.